Q. Are there seasonal or peak periods in the flow of traffic into Florida?

A. Very definitely. Florida is a tourist center. During the winter months thousands and thousands of tourists visit the State, and, of course, they buy all kinds of commodities. Therefore, those commodities have to move into the State in some manner.

We find that our business—and this has held true for 20 years—that the traffic is much heavier during the winter months than it is during the summer time when the tourists have returned home and all of our Florida people who can afford it have gone to the mountains to take a vacation.

Q. Then as a general matter you need substantially more vehicles to take care of your traffic during those months than you do in the remainder of the year?

A. Yes.

[fol. 2971] Q. If you attempted to procure equipment under your own ownership during that period would that equipment remain idle the rest of the year?

A. It would remain idle during the summer months. Our experience has been that unless you keep a vehicle working all year you might very well not have it because you might lose money instead of staying on an even keel.

Q. Mr. Smalley, you have heard testimony at this hearing, and definitions of these independent owner-operators, have you not?

A. Yes, I have.

Q. Do you have your own definition and explanation of owner-operator with reference to the type with which you deal?

A. Yes.

Q. Will you please describe the type of owner-operator to whom you will refer in your testimony so there will be no mistake?

A. There are only two types of owner-operators that we employ in any manner. One is a fruit and vegetable dealer who utilizes trucks in his own business, and owns his own trucks, and who we will call a private carrier. The other type of vehicle that we use is that of an exempt carrier. By that I mean a carrier who transports fresh fruits and

vegetables and whose commodities are exempt from the law in one direction and he has to go back to Florida empty unless he can secure a load of exempt products back into Florida, or unless he can lease to some existing carrier who is certificated.

[fol. 2972] Do the trip leases your company makes occur and reoccur with the same people?

A. Yes. That is necessary for the reason that any owner-operator who leases his vehicle to a certificated carrier must have a for-hire tag on such vehicles. We have to have for-hire tags on our own vehicles. If we lease a vehicle that vehicle must have a for-hire tag. It is the same as if it were our vehicle so far as the rules and regulations in the State laws are concerned.

Q. You are fully conscious, are you not, of your responsibility as a carrier to regulatory bodies, and the public, for the conduct and operations of the leased vehicles?

A. Yes, we are.

Q. Does that consciousness lead you to exercise caution in making those leases?

A. Yes. We exercise caution in every instance. We do not ever lease the type owner-operators that have been referred to in this proceeding as gypsies. We did during the war because we felt we had to, but since the end of hostilities we have not in our operation leased a single type of gypsy carrier, as we know them.

Q. Mr. Smalley, referring to Exhibit 37, the map, the great bulk of production of citrus fruit and vegetables in Florida is south of a line drawn where Ocala appears on the map. Is that correct?

[fol. 2973] A. That is true. It is what is known as the citrus belt, principally in central and south Florida.

Q. Then the large producing area of winter vegetables is located around Lake Okeechobee?

A. That is true.

Q. The recognized large market centers for fresh fruits and vegetables are located in cities, such as Philadelphia, Jersey City, New York, Chicago, and the like?

A. That is right. The larger the city, I would say, the more likelihood—

Mr. Eldred: I wonder, Mr. Examiner, if we could not have the witness testify. I think he should testify instead of being led and words put in his mouth.

Mr. Allison: I was trying to expedite it. I will be glad to go at it in a different fashion. These are preliminary matters and are not anything but of informative importance.

By Mr. Allison:

Q. Mr. Smalley, is there any certificated motor carrier serving any of the market points you mention who also serves that producing area in Florida to which you refer?

A. Not to my knowledge. There may be a few irregular route operations that come into the State occasionally, but so far as a regularly scheduled service, I don't know of any.

Mr. Burton Wheeler: Do you mean to say you are the only person who operates over this route?

The Witness: Oh, no, sir.

[fol. 2974] By Mr. Allison:

Q. What is the practice of your company with reference to these trip leases? Where are they made, for example?

A. Our trip leases are made principally in Atlanta, Ga., to some extent at Jacksonville, Fla., Orlando, Fla., Tampa, Fla., and Miami, Fla.

Q. Are they in writing?

A. They are in writing.

Q. In all cases?

A. In every instance.

For the benefit of the record, I would like to read into the record our method of dealing with this trip lease situation.

Exam. Lawton: If you have a blank form of lease why not put it in the record?

The Witness: No. 1. No trip lease agreement—

Exam. Lawton: What is this?

The Witness: Conditions we require our people to follow providing trip leases are entered into.

Exam. Lawton: Are you not going to put a copy of this into the record?

The Witness: We will be glad to. We didn't intend it as an exhibit.

Mr. Allison: We have copies of the trip lease but not available for distribution. We can furnish them later. We have enough that I believe counsel can share them. It is [fol. 2975] in quadruplicate, but the same information is on each page. I will be glad to furnish them now.

Exam. Lawton: You can furnish it later as an exhibit, then, within 10 days from the close of the hearing. I merely want to save a little time.

The Witness: That no trip lease can be entered into except at the point of origin and that such an agreement be in writing. That no vehicle be trip leased until it has passed rigid inspection meeting all I.C.C. requirements.

By Mr. Allison:

Q. Who performs that inspection, Mr. Smalley?

A. Our company performs this inspection. Our mechanic at the point of origin will perform the inspection before the lease agreement is entered into.

Q. Does the result of that inspection appear upon the lease?

A. Yes, it does.

Q. Proceed.

A. That no trip lease be entered into unless the route or routes over which the vehicle is to travel are set forth in the lease contract.

That no trip lease be entered into unless it applies between terminal points of the carrier.

Q. Now, Mr. Smalley, is there any pick-up and delivery performed by the leased vehicle? Let's take the pick-up, first.

A. No pick-up is performed by the driver of the leased vehicle. Our own employees in cases of truckloads would [fol. 2976] drive the truck to the point of pick-up, make the pick-up, return to the terminal, and notify the lease driver that his truck was ready, that the papers would be signed, and all the requirements met, and then he would proceed on his trip.

Q. How about delivery?

A. Delivery in most instance- is made at the destination terminal. There are a few cases where drop-offs are necessary en route, in which instance the driver will make those drop-offs and be paid for that additional service, but in that instance the leases can only be terminated at the point of destination where the final drop-off was made.

No. 5. The driver of leased vehicles be required to obtain eight hours' rest at place designated by carrier, and be furnished lodging or be paid lodging allowance on the same basis that our own company pays its drivers. In other words, when we make the lease contract we stipulate where the driver is to stop en route. It is necessary for him to check in and check out with our agent at the point we designate.

No. 6. No trip lease can be entered into unless driver of leased vehicle furnishes carrier with physical examination report, or a certificate thereof.

Q. That appears on the lease, does it?

A. Right in the lease contract. It cannot be executed unless the driver is properly qualified physically.

No. 7. No trip lease be entered into unless carrier installs [fol. 2977] on leased equipment appropriate signs meeting I.C.C. requirements.

No. 8. No trip lease can be entered into lest settlement can be effected at carrier's destination terminal with surrender by the leased driver to the carrier of the original copy of lease contract, driver's logs, and lease signs. That gives us complete control over the operation of the leased driver from point of origin to destination and we do not pay him a dime until he surrenders to us the original lease contract, his driver's logs, and the lease sign that has been on his truck during the route of the trip.

Q. Do you require that the equipment have a for-hire tag of the State of Florida, or from some State which has reciprocity with the State of Florida?

A. Yes. It does not have to be a Florida tag, but it has to be a for-hire tag from some State that enjoys reciprocity with Florida.

Q. Do you procure the great majority of your leased equipment from the same lessors?

A. Yes, we do.

Q. The same individuals?

A. The same firms. We use their services over and over.

First, let me say, take people like Morgan Produce Company or Lane Produce Company, who operate a fruit and produce business in the City of Atlanta, Ga. Those people [fol. 2978] have, I believe, ten or twelve vehicles. They are going to Florida constantly to purchase for their own business and for their own fruits and vegetables.

Q. They have no operating rights, themselves?

A. No operating rights whatsoever. They are private carriers doing their own business. It is convenient for us to use their services for this plus traffic that must move southbound.

Q. Is it a fact that their trips—they are going south in Florida and their trips for vegetables and fruit coincide with the influx of additional population in Florida?

A. That is true. During the winter months that is also the fruit season and we can get them during those months, whereas in the summer time when those fruit and vegetables are non-existent in Florida we, of course, cannot obtain the services of these owner-operators.

Q. Mr. Smalley, did you prepare for this hearing an exhibit balance sheet for 1947 and 1948, through September 30th?

A. Yes, I did. It was prepared under my supervision.

Exam. Lawton: This document will be identified as Exhibit No. 38.

(Exhibit No. 38, Witness Smalley, was marked for identification.)

By Mr. Allison:

Q. Mr. Smalley, did you also prepare an income statement for the same period for your company?

A. Yes, it was prepared under my supervision.

[fol. 2979] Mr. Allison: We ask that that be marked as an exhibit.

Exam. Lawton: It will be marked for identification as Exhibit 39.

(Exhibit No. 39, Witness Smalley, was marked for identification.)

By Mr. Allison:

Q. Did you also prepare for this hearing an exhibit entitled "Trip Lease Statistics"?

A. Yes, I did.

Q. This was prepared under your direction from original records of the company?

A. Yes.

Mr. Allison: We ask that this be marked as Exhibit 40.

Exam. Lawton: It will be identified as Exhibit 40.

(Exhibit No. 40, Witness Smalley, was marked for identification.)

By Mr. Allison:

Q. Mr. Smalley, did you prepare as your last exhibit an exhibit entitled "Pay Scale for Trip Leases"?

A. Yes.

Mr. Allison: We ask that that be marked Exhibit 41.

(Exhibit No. 41, Witness Smalley, was marked for identification.)

Exam. Lawton: Off the record.

(Discussion off the record.)

Exam. Lawton: We will recess for lunch until 1:30.

(At 11:45 a. m., a recess was taken until 1:30 p.m.)

[fol. 2980] Afternoon Session—1:30 P. M.

Exam. Lawton: Come to order, please. Resume the hearing.

J. F. Smalley testified further as follows:

Mr. Allison: Mr. Examiner, after adjournment we found we have an adequate supply of the trip lease blanks to which the witness referred, and I would like to offer as an exhibit a copy of that trip lease.

I have copies for any interested parties present who have not yet received them. I might explain that this—identical except for the name of the carrier, R. C. Motor Lines, and that is also one of the participants in this hearing.

Exam. Lawton: That will be identified as Exhibit No. 42.

(Exhibit No. 42, Witness Smalley, was marked for identification.)

Exam. Lawton: These blanks are all alike except that they differ in color?

The Witness: Yes, sir.

Mr. Allison: The provisions are identical.

Direct Examination (resumed).

By Mr. Allison:

Q. Mr. Smalley, how many vehicles are owned by Central Truck Lines?

A. Approximately 300.

Q. Has that number been increasing or decreasing with the years?

[fol. 2981] A. It has been gradually increasing during the years.

Q. Has your company a policy with reference to company-owned vehicles?

A. Yes, we have. It is our policy to always own outright the majority of our vehicles. I might qualify that by saying the great majority. I would say at least 75 percent.

Q. With reference to the trip lease, Mr. Smalley, how does your company satisfy itself as to the qualifications of the driver before the lease commences?

A. When an owner-operator presents himself to our origin terminal, and desires a load, we have instructions in effect that his previous log shall be examined to determine at what time he is qualified to leave on his trip.

Furthermore, it is usually the custom, when a driver-owner presents himself to ask him to leave his equipment and tell him at what time it will be ready for his departure, ask him to get his rest and report at a certain hour. We always see that he has his proper rest before he departs on his trip lease.

Q. You have the vehicle at least eight hours before he presents himself to drive it away?

A. We do. There might be instances where there was a solid truckload to be picked up and our own men would pick the shipment up, and if we ascertained he had his rest we would dispatch him.

Q. Are any of the operators you lease subject to the [fol. 2982] safety rules of the Commission?

A. All operators, whether certificated or not, are under the I.C.C. safety rules, and are required to keep safety logs, and so forth.

Q. Will you please describe what happens to the copies of this lease when it is executed?

A. When the lease is executed it is made in quadruplicate. The original is given to the driver of the leased unit. The duplicate is forwarded to the accounting department of the general office. The triplicate is retained by the origin agent, and the quadruplicate is given to the lessor for his record.

Q. Is this same form of lease identified as Exhibit 42 used uniformly by the group of carriers here represented who serve some or all of the State of Florida?

A. Yes, it is. I might go back. As late as last June we carriers domiciled in Florida, and other carriers operating into Florida, became alarmed over the leasing situation and the practices that had gone on before, and decided we ought to get together for a general discussion of the subject and do something about it.

We realized, of course, we had to get our own houses in order before we could expect any consideration from the Interstate Commerce Commission. We sat down and went over the program and finally came up with this type of lease and the general instructions to all of our people as to [fol. 2983] the execution of the leases, and the other things they must do in order to properly comply with the Interstate Commerce Commission's regulations.

It was agreed at this time that this type of lease would be used by all of us so there would be uniformity, so far as we carriers serving Florida were concerned.

Q. Mr. Smalley, do you know the scale of pay your company pays your drivers?

A. Yes, we pay our drivers the prevailing Southeastern scale, with the exception of men who have been in our service over five years are paid a slightly higher rate on a voluntary basis by us.

Q. Do you know the scale of pay received by the drivers of leased vehicles that your company leases?

A. It has come to my knowledge, by discussing that subject with various people whom we trip lease, that generally speaking they pay their drivers in excess of the wages that the carriers pay. I know of some specific instances where drivers are paid $100 a week, whereas the average pay by our company was around $70 to $80.

Q. Per week?

A. Per week.

Q. Mr. Smalley, you have heard a good bit of the testimony given in this hearing while you have been present, have you not?

A. Yes, I have.

Q. What has been the experience of your company with [fol. 2984] reference to control exercised over these drivers of leased equipment who are not otherwise employees of Central Truck Lines?

A. We have found that it is just as easy to control the actions of these leased drivers as it is our own. In the first place, we have a written contract. They are specifically told in writing exactly what to do and if they don't abide by the contract then we simply don't lease them another time.

We go a step further than that. We advise our neighbors who are in the business that Driver John Jones does not comply with our instructions, and I have a feeling that he is not leased by other operators, either.

Q. Has your company used a written form of lease during the whole period you have engaged in trip leasing?

A. Yes, we have. Right after the O.D.T. issued instructions concerning the leasing of vehicles we began using a written contract form, and have continued to do so since that time. The present contract that we use, as I testified before, was adopted after a lot of discussion with other operators.

Q. Mr. Smalley, as an accountant, would it present any practical difficulties if the drivers of those leased vehicles were carried on your pay roll as your company's regular employees?

A. Yes, it would impose a problem. These drivers are in the employ of their bosses, and they are paid by them. If we put them on our pay roll for one trip it would place us in the position of deducting social security taxes and [fol. 2985] withholding taxes which might cause a bit of confusion because the owners for whom they work would be doing the same thing.

When those reports were filed at the end of the year, and the poor fellow had to pay his income tax it would probably create a confusing problem.

Q. Is it a fact that most of the drivers of the equipment you lease are on regular pay rolls of the lessors?

A. Yes, they are.

Q. Mr. Smalley, has your company given any consideration and made any study of a possibility of attempting to transport these exempt commodities northbound from Florida?

A. Yes, we have given a lot of thought to attempting to transport those commodities. The first reason we can't do it is we are regular route carriers operating between fixed termini on fixed schedule. These commodities move to many places we do not have authority to serve.

Now, if we were able to haul those commodities outside of our present certificated rights, it would then impose a problem on the southbound trip getting back to our point of origin, such as Atlanta, Ga., or Jacksonville, Fla., to get back on schedule, so to speak.

Another reason we cannot do it is because fruit and vegetables have to move to a specific market. In many instances trucks have to go out into the fields and be loaded with hampers of beans or tomatoes, or other commodities. Our [fol. 2986] type of equipment does not lend itself to that sort of thing. There are many reasons why we cannot do it.

The trailer bodies have to be refrigerated, or semi-refrigerated.

We are essentially dry freight haulers. Our trailer bodies are designed for hauling dry freight. Furthermore, our trailer bodies are interchanged, but within our own operation, and to some extent with our connecting carriers to facilitate the handling of traffic. We found to handle these commodities we would have to ventilate every trailer we had and put blower systems on them. That would require a lot of expense which we do not think was justified.

Another reason is the rates that these exempt carriers charge for the transportation of those exempt commodities are non-compensatory in many instances. There are probably many other reasons.

Q. Does the production of vegetables and citrus fruits occur at times in excess volume?

A. Yes.

Q. Then there would be emergency demands for the movement of that traffic?

A. That is true. First, you have your tomato crop, and the tomatoes ripen at one time, so a traffic transportation problem is involved at the time the tomatoes are ready to move to market. The same holds true of beans and other vegetables.

[fol. 2987] Q. Have you observed whether or not there is any unusual movement of vegetables in the winter season when frost or freeze warnings are broadcast?

A. When freeze warnings are broadcast a traffic problem is imposed in the movement of these commodities. Naturally the grower wants to get his vegetables to market as fast as he can to avoid the possibility of their being frozen.

Q. The State of Florida does not impose a mileage tax for the transportation of those commodities, does it?

A. No. That applies to for-hire carriers, but we would have to pay a mileage tax because we are a for-hire carrier.

Q. Would you have any difficulty in explaining to law enforcement officers what a vehicle bearing your sign was doing off your regular routes and off your regular time schedules?

A. It would be pretty hard to explain.

Q. Would you have any accounting problem in accounting for the mileage tax to the State of Florida if you at-

tempted to deduct the mileage for the transportation of agricultural products?

A. Yes.

Q. Can you tell us approximately the amount of mileage tax your company paid the State of Florida in 1947?

A. I believe it was around $42,000.

Q. The State of Florida has an interest in your operation?

A. They certainly have a terrific interest.

Q. Have you in the past attempted to prepare to handle [fol. 2988] these perishable commodities, agricultural products?

A. Yes, we have.

Q. What was your experience?

A. I recall some years ago, prior to the war, we attempted to handle fruit and vegetables to the Port of Jacksonville destined to the New York area, in connection with a steamship line. The steamship line would notify us that such and such a shipment had been sold on the market for the account of "Whom it may concern." They would say, "We did not get enough out of it to cover transportation charges. Therefore, we are billing you back for the charges we previously paid you for the transportation of these commodities."

Q. I understand it was not a satisfactory experience.

A. Not very satisfactory.

Q. Have you given consideration to the status of your operating ratio, comparing the period prior to your trip leasing practice and since the trip leasing practice?

A. Of course our company has had a remarkable growth during the past number of years, but I can say truthfully that our operating ratio has begun to be better since we began to use trip lease vehicles. That might or might not be totally due to trip leases. We have had rate adjustments and a different type of equipment, and other factors enter into it, but I do think the privilege of trip leasing has certainly helped us in the past few years.

[fol. 2989] Q. I notice, Mr. Smalley, on your Exhibit 40, the last two items, you show the operating ratio of your company with the benefit of trip leases and without benefit of trip leases. Those ratios were prepared by you?

A. Yes. That comes about by this fact: Had we had sufficient vehicles of our own to operate all of the miles that we operated during the periods, necessarily we would have had to return a lot of those pieces of equipment back to the point of origin empty, and since all of these miles shown under trip lease miles were just what the schedule said, trip lease miles, we in fact saved that many miles of empty travel northbound. By multiplying that figure by our company's average cost per mile that is the way we show how much we would save, and that is the way we figure the difference in the ratio.

Q. I notice on the same exhibit a comparison in operations per mile of your company equipment and leased equipment. You also prepared those statements?

A. Yes. Our safety department gave me the statistics from which I prepared the information.

I would like to call attention to two lines that are slightly in error that should read, "Miles per accident," rather than "Accidents per mile."

Q. That is the third and fourth lines from the bottom of Exhibit 40?

A. That is correct.

[fol. 2990] Q. I notice, Mr. Smalley, there is a close relationship between the cost per company-mile of vehicle operation and the cost of leased vehicle per mile.

A. A very close relationship between the two.

Q. So the utilization of trip leasing does not save you any money in the item of cost per mile to amount of income?

A. No, it does not.

Q. Will you see the corrections are made in the official copy of that exhibit?

A. Yes, sir.

Q. Is there any further comment you would like to make about Exhibit 40?

A. I believe not. I think the exhibit is self-explanatory with the corrections just made.

Q. Referring for the moment to Exhibit 41, the pay scale for trip leases, do most of your trip lease rates fall in certain weight brackets?

A. Yes, they do.

Q. Can you please explain that?

A. Usually when we trip lease the vehicle we try to pick a vehicle that will carry a maximum load, and, if possible, we also try to pick a vehicle that has a sleeper cab, for the reason that most of our trip leases average from 350 to 700 miles.

From a service-to-the-public standpoint, it is far better [fol. 2991] to have a sleeper cab leased vehicle than it is a regular type which has to be stopped en route so the driver can get his appropriate rest. Furthermore, the more traffic that we can get on a vehicle, that is of the proper size, why, the better operation for our company.

Q. Would you say that the major portion of your trip leased miles are loads of 40,000 pounds?

A. I would say the average would be around 30,000.

Q. Thirty thousand?

A. Yes.

Q. Has this pay scale, to your knowledge, been satisfactory with the lessors?

A. Yes, it has been very satisfactory, and I think the scale our company uses coincides very closely with the scales used by other operators serving the same territory.

Q. You participated, I believe you stated, in the investigations and hearings of the A.T.A. committee.

A. Yes, I did.

Q. You have given this subject, I assume, some considerable thought?

A. Yes, I certainly have.

Q. Have you surveyed or investigated the potential effect upon your company of the prohibition or elimination of trip leasing?

A. Yes, I have. As I see it, if we were denied the privilege of trip leasing we would either have to curtail our [fol. 2992] operation so that our traffic would be balanced, we would have to immediately embargo 20 to 25 percent of the traffic we now handle southbound, or we would have to attempt to buy sufficient vehicles to handle that traffic and then come to the Interstate Commerce Commission for at least a 20 to 25 percent increase in rates so that we could continue to exist.

Q. Then you would also have idle equipment at certain seasons of the year?

A. We would, and that would impose a terrific burden upon us because a truck and trailer sitting idle costs the owner plenty of money. Your investment and depreciation goes on, and taxes and everything else, except your crew operating expenses.

Q. Mr. Smalley, I notice on Exhibit 37, the map, you apparently have about 43 terminals; is that correct?

A. That is correct.

Q. And at how many terminals do you maintain repair shops, garage facilities?

A. We maintain garage facilities at Atlanta, Ga., Jacksonville, Fla., Ocala, Fla., Tampa, Fla., Orlando, Fla., and Miami, Fla.

Q. In the light of your company's policy of owning a substantial majority of all equipment operated, do you have any policy with reference to the continuation or expansion of those facilities?

A. Yes. We have expanded rapidly during the past 20 years and we, of course, hope we will continue to expand, [fol. 2993] and if we do it will be our purpose to continue to add additional equipment by direct purchase as we go along.

Q. And these repair facilities—

A. Will also be enlarged to take care of the fleet enlargement.

Q. Mr. Smalley, you have referred to these seasonal peaks in the flow of traffic. Do you know of your own knowledge, and from your connection with the Florida Trucking Association, whether your competitors experience the same impact from those seasonal peaks?

A. Yes, I know for a definite fact that they do.

Q. And at the same time you experience them?

A. Yes.

Q. That being true, do you consider it would be possible to lease any equipment from those carriers?

A. No, it would not.

Q. Not at the same time that your needs occurred?

A. No, that is right.

Exam. Lawton: Do I understand you are not interested in the northbound fruit and vegetable traffic?

The Witness: We are interested in it.

Exam. Lawton: But you don't handle it to any great extent?

The Witness: Our operation is so constituted it is practically impossible for us to handle it, due to the reasons I explained. We are regular route carriers operating on fixed schedule, and other reasons I explained.

[fol. 2994] Exam. Lawton: Is the point that you wanted to make, that no interference should be made with the southbound leasing of those exempt haulers?

The Witness: That is correct, sir.

By Mr. Allison:

Q. Mr. Smalley, has your insurance cost or rate fluctuated by reason of utilization of trip leases?

A. It has not. Our accident experience has been better with the utilization of leased equipment than it is within our own fleet. It could not have that effect.

I might add further that our P. L. and P. D. insurance is written on a gross receipts basis, and it covers our own vehicles and those we lease. The same is true of cargo insurance. The people who lease equipment to us carry their own fire and theft and collision insurance.

Q. Has your company ever been prosecuted for violation of hours of service?

A. No.

Q. Are your rate levels the same as those of your competitors?

A. Yes, they are.

Mr. Allison: The witness is tendered for cross-examination.

Mr. Wells: I would like to ask a couple of questions.

By Mr. Wells:

Q. You indicated a figure that is an estimate of mileage tax paid to the State of Florida on miles operated within the State of Florida. Is there any distinction in the mile-

[fol. 2995] age on equipment owned by you and equipment leased by you?

A. No, sir. We are required to pay the tax on equipment whether it be leased or is our own.

Q. If it is controlled by you you pay the tax?

A. That is right.

Q. Just a question in regard to the fruit and vegetable movement: Is it true nearly 100 percent of it moves out of Florida northbound on either private or exempt vehicles?

A. Yes, that is true.

Exam. Lawton: Then those vehicles coming back southbound to Florida are leased by northern carriers; is that right?

The Witness: They are leased by northern carriers to some extent and to some extent they transport exempt commodities back into the State.

Exam. Lawton: Southbound?

The Witness: Southbound, and, to some extent, probably now and again they might do otherwise.

Exam. Lawton: Which might cover a multitude of sins?

The Witness: That is right.

Exam. Lawton: Who is ready to cross-examine?

Cross-Examination.

By Mr. Eldred:

Q. Mr. Smailey, what percentage of your revenue comes from intrastate operations as compared to interstate?

A. Approximately 50 percent. I believe that was the [fol. 2996] figure the last time I checked it.

Q. Now, you are a common carrier, I understand, of general commodities, authorized by the Commission, with the usual exceptions, sir.

A. That is correct.

Q. And your authority would give you permission to haul fruits and vegetables, I understand.

A. Yes, it would.

Exam. Lawton: Your routes do not extend north of Savannah, Ga.?

The Witness: North of Atlanta, Ga.

Exam. Lawton: North of Savannah and Atlanta?

The Witness: That is correct.

By Mr. Eldred:

Q. You stated that you made trip leases at Jacksonville, Atlanta, Tampa, and Miami. What would be the reason for making leases at Tampa and Miami?

A. It would be a rather rare occasion that we would do so. It might be possible that we had a lot of freight in Miami, an excess load on one day, and knew of an exempt or private carrier who would like to get back to Tampa, in which instance we would gladly utilize him if we could.

Q. Where are the fruit and vegetable dealers located with whom you make these trip leases?

A. The fruit and vegetable dealers that we utilize are principally in Atlanta, Ga.

[fol. 2997] Q. Yes. Now, these dealers lease their vehicles to you over a period of time, the same dealers?

A. Yes, frequently recurring leases are made.

Q. Is it their practice to lease their vehicle to you at Atlanta for a movement to Florida points, and then they buy a load of fruit and vegetables and then haul it back?

A. That is correct.

Q. Are you familiar, sir, with the policy of the Commission as stated in numerous cases, in which they have denied fruit and vegetable dealers who are private carriers in one direction from becoming a carrier for compensation in the other direction?

Mr. Diehl: I object to the question, Mr. Examiner. It is beside the issue in the case and immaterial and irrelevant.

Mr. Eldred: I think it is very, very material.

Exam. Lawton: Overruled. He asked if he was familiar with them.

The Witness: I am not familiar with any cases of that character.

By Mr. Eldred:

Q. Has R. M. Brunson represented you before the Interstate Commerce Commission?

Mr. Diehl: I object to that. I don't see the relevancy to the issues in the case, if he represents him, whether it is Brunson, me, or Mr. Allison.

Exam. Lawton: Is Mr. Brunson here?

(No response.)

[fol. 2998] Exam. Lawton: Objection sustained.

By Mr. Eldred:

Q. Has your company appeared in proceedings before the Commission?

A. Many times; yes, sir.

Q. Do you know whether or not they have opposed an application of a fruit and vegetable dealer in Florida who transported his own products out of the State and requested authority from the Commission to transport commodities into the State as a carrier for compensation?

Mr. Diehl: Objected to on the same grounds, Mr. Examiner.

Exam. Lawton: What has that to do with this issue?

Mr. Eldred: I think it is very relevant in this proceeding, Mr. Examiner. The Commission has set forth time after time opposing a private carrier being granted authority to operate as a common carrier for compensation. Now, this carrier comes in and by leasing the trucks of the private carrier undermines the principles established by the Commission and creates the conditions and unfair practices upon which the Commission denied the private carrier authority to operate.

Exam. Lawton: You can argue that point on brief.

Mr. Diehl: Mr. Examiner, I request Mr. Eldred's speech be stricken physically from the record.

Exam. Lawton: Let's not have any more of that. Motion denied.

By Mr. Eldred:

Q. Now, Mr. Smalley, you stated as one of the reasons [fol. 2999] why you would not transport the exempt commodities that the rates were non-compensatory; isn't that true?

A. Yes, sir.

Q. Will you tell us why those rates are not compensatory?

A. I could tell you that in my opinion an exempt carrier can operate so much cheaper than a carrier such as ourselves can operate by virtue of our large overhead, and so forth.

Q. Do you think it is sound transportation policy to encourage the operations of the exempt carriers?

Mr. Wells: Is that in issue in this case, Mr. Examiner?

Exam. Lawton: No.

Mr. Eldred: If he is leasing them he certainly is encouraging them.

The Witness: That is a very hard question to answer. I imagine you could get a better answer from some of the witnesses who will follow who are thoroughly familiar with the amount of traffic involved.

By Mr. Eldred:

Q. You are one of the oldest members of the industry in that territory, aren't you?

A. From point of view of age, maybe so.

Q. You were pretty much qualified as being familiar with the conditions existing there by your counsel.

A. Maybe I could answer you in this way: I don't believe the Interstate Commerce Commission could issue enough certificates to that type of carrier to handle the fruit and citrus crop in Florida. It is a terrific movement.

[fol. 3000] Q. I asked you whether or not you thought it was a sound transportation practice to encourage the operations of these exempt carriers. That was the question.

A. So long as they are properly regulated, I think it is proper for them to continue to do business as they have all these many years.

Q. Well, now, you operate some refrigerated trucks, do you not?

A. Only one.

Q. If this traffic were remunerative to you and you could make a profit out of it wouldn't you transport it?

A. Well, sir, that is just one phase of the situation. It is terribly involved, as I tried to explain in previous testi-

many. It is very hard for any dry freight carrier to attempt to handle freight in one direction that requires refrigeration, and to handle dry freight in the opposite direction.

Q. There is nothing to prohibit you from handling refrigerated products in the other directions?

A. We handle refrigerated products only on one unit, which operates between Jacksonville and Tampa on round-trip service. That vehicle carries milk, yeast, fresh meats and products of that description.

Q. Isn't it a fact that your company has opposed carriers which desire to transport those commodities in the State of Florida?

Mr. Allison: I object to the questions unless the occasions [fol. 3001] are specified, because it is argumentative, and considering the answer to that question might be "yes," it would be of no value here because there may have been circumstances in those operations which made them not on the same basis as those in this investigation.

By Mr. Eldred:

Q. Did not your company oppose the application of B. & E. Transportation Company seeking authority to transport refrigerated commodities from points in New Jersey and New York to points in the State of Florida?

A. It is my recollection we did oppose that application, and it is also my recollection that they applied for other packinghouse products which did not require refrigeration, and we opposed that portion which applied to traffic we could handle.

Q. Although you are a common carrier you are picking and choosing your traffic; is that correct?

A. No, sir; we are handling general commodities.

Q. But you are not handling refrigerated products.

A. Only to the very small extent I testified to previously, with the further explanation it is practically impossible to handle both types of traffic in the same sort of vehicle.

Q. Is it your contention there is no refrigerated traffic moving out of points in Georgia to Florida?

A. Yes, there is quite a lot of that sort of traffic, and I think it moves by carriers who specialize in the hauling of that sort of traffic.

[fol. 3002] Q. But you don't offer service for that type of commodity?

A. No, sir.

Q. You stated, I believe that the owner-operator has to report at your terminal at origin, and also reports at your terminal at destination.

A. That is correct, sir.

Q. Do you think that is necessary?

A. Yes, sir; I certainly do.

Q. And that you believe is essential for complete and proper control of that type of operation?

A. Yes, sir; I do.

Q. Then you do not pursue the practice of turning over a shipment to an owner-operator and letting him deliver at will and not know when you are through with his vehicle?

A. No, sir; we do not. I think that is a bad practice.

Q. And insofar as that point is concerned, you disagree with the recommendations of the A.T.A. report?

A. We approved of the recommendations of the A.T.A. generally.

Q. Yes.

A. Our own method of doing business might vary slightly, but, generally speaking, we go along with the A.T.A. recommended report.

Q. But in this instance you do go further—

A. We do go further than they recommended.

Q. Yes. When did you start this practice of trip leasing, sir?

[fol. 3003] A. I believe it was 1942. It was right about the time that the O.D.T. order came out covering the conservation of equipment.

Q. Prior to that time you did not?

A. No, sir.

Q. How many years had you been in business up until that time, sir?

A. Probably 15.

Q. Now, in connection with the fruit and vegetable hauling, sir, you serve, I believe, Pompano, Fla.?

A. Yes, sir.

Q. Isn't it a fact that at that point is located one of the largest markets where vegetables are assembled and sold for shipment?

A. Yes, that is a large vegetable market.

Q. And at that point you could obtain a substantial volume of traffic without any necessity of going into the field, could you not?

A. I have not checked their methods personally. I don't know.

Q. You are not familiar with that?

A. Not enough to answer that question. I do know it is considered a large distribution center for vegetables.

Q. Are you familiar with the fact that the farmers bring their products in there and sell them to buyers at that point?

A. I do know it is a common practice for trucks to come right to the field and be loaded right in the field. Beans are [fol. 3004] loaded in hampers at the edge of the field.

Q. Do you know that at that point farmers bring their products into market and sell to buyers and the buyers themselves arrange for transportation beyond?

A. I assume they do, yes.

Q. It is my understanding from your testimony that the Florida State Commission would not permit your company to arrange a schedule that met the demands of these shippers in the transportation of fruits and vegetables?

Mr. Allison: Mr. Examiner, I will ask counsel if he will defer that question. We have a witness who is an official representative of the Florida Commission.

Mr. Eldred: I won't pursue that any further. I will just ask one question, if I may.

The Witness: Will you read the question, please.

(Question read.)

The Witness: I don't believe they would because in so doing they would be denying many shippers of general traffic proper service.

By Mr. Eldred:

Q. In other words, if they permitted you to do that, it is your contention you would not be able to perform the other?

A. That is right. We would have to curtail our general service to the general public if we gave the service that is required on the fresh fruits and vegetables.

[fol. 3005] Q. Couldn't you obtain additional equipment for performing that operation?

A. I doubt if we could economically.

Q. You could not do it economically on account of the rates?

A. In the overall transportation, so far as our company is concerned, I don't believe we could.

Q. Now, where do you lease these exempt haulers, what points?

A. Principally at Atlanta, Ga., and Jacksonville, Fla., occasionally.

Q. If you leased them in Jacksonville, Fla., would that be primarily for intra or interstate?

A. It might be either, or both, or a combination.

Q. Now, is it my understanding that these exempt haulers are engaged in transporting these fruits and vegetables from points in Florida to Atlanta? Do they do that?

A. Yes, they do that. However, I think most of the traffic moves north of Atlanta to the large distributing centers like New York, Baltimore, Philadelphia, and Cincinnati.

Q. I understand that, but speaking of these particular haulers that you lease, do they merely go to Atlanta?

A. In some instances they do and in some instances they go to points north of Atlanta, but they come to our terminal and ask for the privilege of leasing back home.

Q. I will ask you this question, sir: If you did not lease these exempt haulers, and if that leasing of exempt haulers was prohibited by the Commission, do you think that would [fol. 3006] increase the rates which are now being charged for the transportation of fruits and vegetables out of the State of Florida?

Mr. Wells: I object because the question would require a change in the law, and I don't understand that that is involved here, or that there is any issue here in regard to change in the law.

Mr. Eldred: I asked if that would prohibit the leasing of exempt carriers. I think that is a proper question.

Exam. Lawton: Do you have any opinion on that?

The Witness: Will you restate the question, please?

Exam. Lawton: Read the question.

(Question read.)

The Witness: Yes, I believe it would. We developed figures in Florida that showed that during the year 1947 the certificated carriers paid to both private carriers and exempt commodity carriers the sum of $1,000,239, approximately, which certainly had the effect of reducing the transportation costs of Florida fruit and produce to the market.

By Mr. Eldred:

Q. If this leasing were prohibited it would be entirely possible, would it not, that the rates on these commodities might be such that it would be profitable to transport them?

A. That is a question I don't feel qualified to answer. I just don't know.

[fol. 3007] Q. You have not made a study of that?

A. I have not made a study of it. I do know the State of Florida would have to be in a competitive position with other States who market similar commodities.

Q. I am assuming if the Commission prescribed these rules they would be nationwide so there would be no difference in the competitive standpoint.

Mr. Diehl: That would not necessarily preserve the relationship I submit, Mr. Examiner.

Exam. Lawton: All right. Do you have any more questions?

Mr. Eldred: Yes, sir.

By Mr. Eldred.

Q. You have stated here in Exhibit 40, sir, that you saved $204,000 as a result of trip leases, based on a mileage saving of 991,459. How did you compute this mileage saving?

A. By multiplying the number of miles we saved by virtue of not having to operate empty miles on the return trip, by our company's average cost per mile.

Q. This was entirely empty miles?

A. That is correct, predicated on that assumption.

Q. Now, on this cost per mile of 20.64 cents, what is included in that cost?

A. That is the total consideration that we paid the owner of the leased vehicle.

Q. I don't think you got my question. I asked what was included in your company cost of 20.64 cents.

[fol. 3008] A. That is over-the-road operating cost. That takes in our maintenance of over-the-road equipment, fuel, drivers wages, mileage taxes, depreciation of over-the-road vehicles, and other elements of cost that go into your purely over-the-road cost.

Q. That does not include any of your pick-up and delivery costs?

A. No, sir; no pick-up and delivery activities, and no overhead.

Q. You find no difficulty, sir, in paying on the basis of so much per-mile?

A. No, sir. We feel that is the best method of effecting settlement with the leased operator.

Q. And, as I understand it, you do not pay on a percentage of revenue?

A. No, sir; we do not. I might qualify that to this extent: We have one refrigerated unit that is under a term lease with an old ex-employee of ours who bought this outfit himself and leased it to us, and handles refrigerated products only over the route from Jacksonville to Tampa, Fla. We don't like it, and we propose to change that contract to provide for a tonnage basis or mileage basis comparable to what the revenue basis is now producing. We don't think the revenue basis is proper in effecting lease settlements, whether they be term leases, or—

[fol. 3009] Q. So in this instance you go further than the recommendations of the A.T.A. in that you suggest a definite method—

A. This is the method in which we are employing leased vehicles and we go a little further in this instance.

Q. Is this the general practice of your group of carriers you were talking about that made this lease?

A. I am sure they all employ the same method of effecting settlement.

Q. I am referring to Exhibit 42.

A. Yes.

Q. Is it your understanding that they require the driver to report to their agent at destination before he is released?

A. I believe they do. They will follow me on the stand and you can develop that definitely.

Q. All right.

This traffic situation which you speak about being unbalanced, what is the proportion of northbound as compared to southbound of your total traffic, sir?

A. I believe last time I had occasion to check it was sixty-forty. That varies to some extent.

Q. Now, has that been the general situation insofar as balance of traffic since you have been operating? I mean, has it varied much from these figures?

A. As a general average for the overall length of time, I would say that would be a fair statement. I might further say we are faced with this problem: While that sixty-forty [fol. 3010] figure predominates, and the northbound traffic is a very short haul as opposed to a long haul on the southbound, being intrastate carriers we utilize the vehicles going northbound to take care of the interstate traffic.

Before they go back to point of origin they are usually empty.

Q. How many carriers, including common and contract carriers, are there, to your knowledge, sir, in the States of Florida and Georgia that hold authority from the Interstate Commerce Commission? Have you any estimate?

Mr. Allison: Mr. Examiner, I think if counsel would be a little more specific the witness may be able to answer. There are types of intrastate carriers who are not interstate carriers, such as irregular route carriers. I don't think he got the purport of the question.

By Mr. Eldred:

Q. I was trying to get the overall picture of carriers authorized by the Commission, both regular route and

irregular route carriers, who hold authority, who are domiciled in Florida and Georgia. Have you any idea?

A. That would be a hard question to answer. I could tell you the names of all the regular route common carriers operating between the two States, but there are a number of irregular route carriers that don't come to my attention because of their infrequent operations.

[fol. 3011] Q. How many regular routes?

A. Central Truck Lines, Great Central, Terminal Transport Company, R. C. Motor Lines, Reliable Transfer Company, and Georgia-Florida Motor Express.

Q. Are there any carriers holding authority from the Florida Commission to haul intrastate, that have registered their rights with the Interstate Commerce Commission?

A. Not that I know of.

State your question again. Maybe I didn't quite understand it.

Q. Did you know a motor carrier operating within one State and holding—

A. I see what you mean. Yes, there are several carriers domiciled in Florida operating in the State of Florida who participate in interstate commerce, and therefore have I.C.C. authority.

Q. At the Atlanta hearing that you referred to in connection with the regional hearing in connection with leasing, did I understand you to say six persons were present?

A. I said five or six. I believe I am correct.

Q. What States, approximately, was that hearing to cover?

A. It is my understanding it was to cover Florida, South Carolina, Georgia, Alabama, North Carolina, and Tennessee, and I believe Mississippi.

Q. Were those six appearances appearing for themselves [fol. 3012] individually or were they from any associations that were expressing views at the Atlanta hearing?

A. I believe they were appearing individually with the exception of myself. I was representing the Florida common carrier division of the State Association.

Q. So it was a pretty small representation of the total number?

A. All told, I would say about ten or twelve carriers were represented.

Q. Out of at least several hundred?

A. Yes.

Q. When is this real peak of the winter tourist trade that you refer to, sir?

A. The peak of the tourist trade I would say is from December 1st until March 31st.

Q. Now, your movement of fruits and vegetables extends over a long period, does it not?

A. Yes. The movement of fruit and vegetables extends from approximately October 15th until May 15th.

Q. You refer to the necessity of quick transportation during a freeze. In other words, it is not necessary to always transport the commodity to market to protect it from a freeze, is it?

A. Well, sir, fresh fruits and vegetables usually have to be dispatched to the market quickly because they are perishable.

Q. We will take oranges.

A. They are perishable; yes, sir.

[fol. 3013] Q. As a protection from freeze they can still be put under cover and usually protect them——

A. I don't know where they would find a cover to put them under. Maybe some of the fruit experts can answer that.

Mr. Allison: May I say that a representative of the Florida Citrus Commission will be a witness?

Mr. Eldred: Thank you. That is all, sir. Thank you very much.

Exam. Lawton: We will take a five-minute recess.

(Short recess.)

Exam. Lawton: The hearing is resumed. Come to order, please.

Mr. Allison: Mr. Examiner, I would like to request the indulgence of the Commission and counsel to remove this witness, have another witness sworn to introduce similar exhibits, and adopt this witness' testimony. He has a plane to catch.

Exam. Lawton: Very well.

CLINTON L. SANDERS was sworn and testified as follows:

Direct Examination.

By Mr. Allison:

Q. Please state your name, address, and occupation.

A. My name is Clinton L. Sanders. I am vice-president of Terminal Transport Company, Inc., and my residence is Atlanta, Ga.

[fol. 3014] Q. Mr. Sanders, the Terminal Transport Company is a regular route motor freight common carrier certificated by this Commission?

A. Yes, sir.

Q. Have you heard all of Mr. Smalley's testimony?

A. Yes, sir.

Q. Do you adopt that testimony as testimony for your company?

A. Yes, sir.

Q. And you have been here—your were here the first two days of this hearing, October 14th and 15th?

A. Yes, sir.

Q. And you have been here December 13th, 14th, and 15th?

A. Yes.

Q. Did you prepare similar exhibits to those introduced by Mr. Smalley for your company?

A. Yes, sir.

Q. Is this the exhibit?

A. Yes, sir.

Mr. Allison: We would like to offer as one exhibit the six-page assembled document identified by the witness.

Exam. Lawton: This document headed "Terminal Transport Company, Inc., Balance Sheet Statement," consisting of six sheets, will be identified as Exhibit 43.

(Exhibit No. 43, Witness Sanders, was marked for identification.)

[fol. 3015] Mr. Allison: That is all I have of this witness, Mr. Examiner.

Exam. Lawton: Is there any cross-examination of this witness?

Cross-Examination.

By Mr. Eldred:

Q. Mr. Sanders, would your testimony on cross-examination be the same as that given by Mr. Smalley?

A. Yes, sir.

Exam. Lawton: Is there any other cross-examination?

By Mr. Burton Wheeler:

Q. I notice that you say that the total over-the-road cost of your company is $694,000 in 1947 and $712,000 in 1948; the total over-the-road cost of trip lease, $143,000 in 1947 and $176,585 in the nine months of 1948; cost per mile of company vehicles, 18.34 cents in 1947, and 20.10 cents in 1948 as against the cost per mile of trip leased vehicles of 17.88 cents in the year 1947 and 17.20 cents in 1948.

How do you account for the difference in the saving that you make in the trip lease?

A. That possibly has some bearing by reason of the fact that we go through the States of Tennessee and Kentucky where we do have an overall load limit of 42,000, which does not enable us to load as heavily as we normally would if we did not have that load limit.

Also our trailers and our own company units—we are able to load those a little heavier than the leased units in [Vol. 3016] those States because of the lightness of our trailers.

Q. I didn't catch that.

A. Our trailers are lighter than the units we would ordinarily lease.

Q. The people that you employ on your own trucks, your own equipment—do they belong to the union?

A. Definitely.

Q. But the men who belong on the trip lease do not necessarily belong to the union, do they?

A. Yes, they all do, sir.

Q. How are they paid? How are they employed? Are they employed by you or how do you arrange for your contracts?

A. In a similar manner that Mr. Smalley does with Central. In other words, we pay the company from whom we lease the unit, and they in turn pay the driver.

Q. What proportion of the operation is performed by vehicles owned by you? You understand what I mean by "owned." There isn't any confusion in your mind about that term, is there?

A. I don't think so. Approximately 85 percent. I would think it would be more than that, but conservatively 85 percent.

Q. How long has your company been in business?

A. To my knowledge, Terminal Transport has been in business approximately 15 years.

Q. When did you first start using trip leases?

[fol. 3017] A. I came with the company in 1945. We were using it at that time.

Q. How long previous to that time had they been using it?

A. I couldn't say definitely. I know they were using it in 1942.

Q. It was a practice that grew up during the war?

A. To some extent.

Q. Prior to that time were they using it?

A. I don't know.

Q. Previous to the year 1942 did the company make money?

A. No, sir.

Q. When did they start making money?

A. In 1946.

Q. After you came with the company. If you can make more money with the trip leases, and it is indicated that Mr. Smalley's company was the same way, then I assume you will gradually go to trip leases.

A. No, definitely not.

Q. Why is that?

A. It is our belief we need our own equipment.

Q. Why do you prefer to own your own equipment if you can make more money with trip leases?

A. You cannot make more money with trip leases entirely.

Q. But your accounts show that you are making more money on a trip lease, do they not?

[fol. 3018] A. Possibly it does in some respects.

Q. For your nine months in 1948 you say that your cost per mile of company vehicles was $20.10 and cost per mile on your trip lease vehicles in that same period was $17.20—

Mr. Diehl: That is cents, not dollars, Senator.

The Witness: That is cents. It possibly looks like dollars.

By Mr. Burton Wheeler:

Q. I beg your pardon. The way it is set forth it looks like dollars. It was 20.10 cents.

A. That is correct.

Q. As against 17.20 cents per mile.

A. That is correct, sir.

Q. You save approximately 3 cents per mile, which is quite a saving, is it not, sir?

A. That is right.

Q. Have you figured that up? I have just hastily glanced at this. Have you shown the savings in the nine months' period on that? What is the total you save?

A. $145,113.

Q. For the nine months of 1948?

A. Correct.

Q. And the year 1947 was $146,773?

A. Correct, sir.

Q. If you can save that much money, $145,000 for nine months, why do you say that you prefer to own your own vehicles rather than go into trip leases entirely?

[fol. 3019] A. Well, for various reasons. Most of all the board of directors say they want to own their own equipment.

Q. They want to own their own equipment?

A. That is right.

Q. Why do you say that they want to own their own equipment if they are in there to make money? That is the reason they are in business?

A. I couldn't tell you.

Q. How is that?

A. I don't know.

Mr. Burton Wheeler: I think that is all.

By Mr. Eldred:

Q. Do you operate any refrigerated equipment?

A. No, sir.

Q. You do not?

A. No, sir.

Q. However, your company does serve, I believe, several large centers of consumption of Florida's fruits and vegetables; is that correct?

A. We serve Indianapolis, Ind.; we serve Chicago and Atlanta.

Q. And Louisville?

A. No, sir.

Q. What type of persons do you lease your vehicles from?

A. Identical with those of Central Truck Company.

Q. Where are those fruit dealers located from whom you lease?

A. Part in Chicago and part in—the greater percentage, of course, in Atlanta.

[fol. 3020] Q. I see. Do you lease from any individuals? By that I mean, who own one truck?

A. Occasionally.

Mr. Eldred: That is all I have.

By Mr. Todd:

Q. Mr. Sanders, when the Commission opened up this investigation on leasing practices, isn't it true that carriers who are situated similarly to your company got together in an effort to work out some means of using trip lease equipment and still assure the Commission the control, and everything over the vehicles, that it desires?

A. Exactly, sir.

Q. I take it the plan described by the witness previous to you is a result of those efforts; isn't that correct?

A. That is correct, sir.

Q. Are you familiar to a certain extent with the type of trip leasing that goes on in and around Chicago, Ill., generally?

A. To some extent; yes, sir.

Q. Do you consider the type of leasing operation or plan that you and your associated carriers have developed simi-

lar to the type of trip leasing that goes on generally in and around Chicago?

A. To my opinion, and to my knowledge; no, sir; it is not.

Q. Do you believe you have a greater control over the vehicles you use under your plan than is ordinarily exercised over trip lease equipment?

[fol. 3021] A. Yes, sir.

Q. Do you believe that to a certain extent that is true because you do use established companies in your trip lease operations rather than the itinerant trucker who owns only one piece of equipment?

A. In my opinion, that is so.

Q. If the I.C.C. should prohibit the use of trip leasing generally, but would provide a system under which a group of persons could submit a plan for utilizing equipment in both directions, as you have done, and assure the Commission the necessary control, would that suit your company and similar interests?

A. I should think so; yes, sir.

Mr. Todd: That is all I have; thank you.

By Mr. Idol:

Q. Mr. Sanders, do I understand you are able to load more tonnage on your own company-owned equipment than on leased equipment?

A. As a rule, we are.

Q. Do you know what the differential is?

A. Around 1,500 pounds per unit.

Q. That is attributable to the difference in tare weight of the vehicle itself?

A. Yes, sir.

Mr. Idol: That is all.

[fol. 3022] By Mr. Nisbet:

Q. Does your company render a scheduled service to and from Chicago?

A. Yes.

Q. Do you utilize leased vehicles in both directions?

A. No, sir.

Q. In which direction do you utilize the leased vehicles?

A. Southbound, sir.

Q. Can you give me any estimate as to what percentage of your Chicago operations the leased vehicles' operation would constitute over any given period, say 30 days, six months, or whatever you have in mind?

A. In other words, what percent of our total out of Chicago we use leased units?

Q. Yes.

A. I would say 15 to 18 percent.

Q. And the rest is company-owned equipment?

A. Yes.

By Mr. Arpaia:

Q. What position do you hold with your company.

A. Vice-president in charge of sales.

Q. You say you adopt the testimony of Mr. Smalley?

A. Yes, sir.

Q. Mr. Smalley attributed as a reason for his use of trip leases the fact that there is an unbalanced movement of freight between the points that he serves in Florida and [fol. 3023] Atlanta, and he also stated there was a seasonal demand in the State of Florida.

The southernmost point on this map is Tampa and Jacksonville, on the one hand, and Chicago, on the other. You serve those intermediate points?

A. Only Atlanta and Indianapolis, intermediate points.

Q. Then between Atlanta and Chicago you don't have that condition of seasonal demand, do you?

A. Definitely, sir.

Q. You do?

A. The preponderance of freight is southbound. It is not necessarily seasonal.

Q. This unbalance of freight—to what do you ascribe that unbalance?

A. In my opinion, Chicago and the Chicago area is highly industrialized, whereas the South we hope soon will be but as yet it is not industrialized to that extent.

Q. You said you use leases on your southbound movement.

A. That is correct.

Q. You find that 15 to 18 percent is the relationship in the freight which moves southbound as against that which moves northbound?

A. The preponderance of freight is more, but we use trip leases to that extent.

Q. Do you take care of all the normal requirements of [fol. 3024] your business with your owned fleet? Maybe that isn't clear.

You first say you use your own fleet to carry the freight that is offered to you for movement.

A. That is correct, sir.

Q. When do you use gypsies? Do you use them on a special kind of freight, or to take care of the overdemand?

Mr. Diehl: I know the witness will say this, but the word "gypsy" has been used very loosely, and I call attention to the fact that the witness has not said that he uses gypsies.

Exam. Lawton: I got the impression that he didn't use the word "gypsies."

By Mr. Arpaia:

Q. Don't you use trip leases?

A. Yes, sir.

Q. These people you use on trip leases—I heard you say occasionally you use one operator.

A. Yes.

Q. We will call them trip leases. Do you handle that freight which is offered to you first on your own vehicles or do you use these trip lessors for selected freight?

A. No, sir. In other words, the first freight we load for transport is in our own units.

Q. Now, these trip lessors are not interested in less than full loads, are they?

A. No, sir.

Q. Under the circumstances, if you can't give them a [fol. 3025] full load do they carry freight for somebody else, another carrier?

A. No, sir.

Q. How do you get them to work for you?

A. If, for example, we don't have a full load they may

wait over until they can be completely loaded. Otherwise we take it off.

Q. You take it off?

A. That is right.

Q. Then that movement doesn't go. It waits over?

A. It possibly waits over for a short while, yes.

Q. And by that time you could use your regular equipment to handle that freight?

A. By that time we would.

Q. So it is not strictly necessary in order to provide service for the shippers for you to use that trip lessor, is it?

A. Yes, sir.

Q. If you could hold that freight over for a day or two and carry it on your own vehicles, and you have done it, and you do it, why in such cases do you first offer it to a trip lessor?

A. The truth of the matter is that we would not be able to—if we had 10,000 or 15,000 pounds of freight to go south we would pay the driver whatever the minimum scale would be and go ahead and send it on south.

Q. I thought you testified they would not be satisfied with [fol. 3026] less than a full load.

A. As long as they get their minimum guarantee, that is what they are interested in.

Q. These people you use on these trip leases, are they the people that Mr. Smalley described as exempt carriers who carry fruits and vegetables north?

A. That is right, sir.

Q. Do you use them sometimes as far as Indianapolis and from there on does somebody else use them to Atlanta, and perhaps Mr. Smalley gets them in Atlanta?

A. In other words, if we load on out of Indianapolis as far as Atlanta possibly Mr. Smalley would lease them from there on?

Q. Yes.

A. That is possible.

Q. Were you in the transportation business before 1945?

A. Yes.

Q. What type of transportation?

A. Irregular carrier.

Q. By motor carrier?

A. Yes, sir.

Q. General commodities?

A. No, sir; limited commodities. Tombstones.

Q. You don't know anything about the history of your company prior to 1946?

A. Partly.

[fol. 3027] Q. When was it incorporated?

A. That I don't recall.

Q. You said that 85 percent of the equipment is fully owned.

A. That is right, sir.

Q. How many units do you operate?

A. 255.

Q. Has that fleet increased since 1946?

A. Yes, sir.

Q. By about what amount?

A. From approximately 50 units to 255.

Q. From 50 units, you said——

A. That is right.

Q. —to 255 in a period of about two years?

A. Two and a half years.

Q. Would you say that your use of trip leases has increased or decreased during that period?

A. It has increased to some extent.

Q. Are you familiar with rates?

A. I am not a rate expert.

Q. First, let me ask you this question: Mr. Smalley said it was the policy of his company to own their own vehicles. You adopt that testimony, too, don't you?

A. Yes, sir.

Q. Mr. Wheeler asked you why, and I didn't get the answer.

A. I don't think I answered that in full because, frankly, [fol. 3028] I don't know definitely myself. I know it is the policy of the company.

Q. From your observation and experience, do you think it is possible for a carrier, an interstate carrier by motor, of general commodities, to give to the shipping public safe, dependable transportation, every-day transportation, if it did not own a substantial part of its equipment?

A. I don't think so, personally.

Q. And has your own company run into situation where competitors using trip leases substantially more than you do, or perhaps almost entirely, have cut rates below what are compensatory for you?

Mr. Wells: Mr. Examiner, is there any testimony as to any particular carrier that uses trip leases almost exclusively, as assumed by the question?

Exam. Lawton: Not in competition with these carriers, as I recall. You are domiciled in Florida?

The Witness: No, sir; domiciled in Indianapolis. But there are none who run in competition who use a greater portion, or 100 percent trip leasing, to my knowledge.

By Mr. Arpaia:

Q. You don't find that situation prevails in Chicago?

A. It is possible in Chicago, but we run south of Chicago.

Q. Between Chicago and Indianapolis?

A. We go no further than that.

[fol. 3029] Q. Do you use the same form of lease to cover your trip lessor as this form that is introduced in evidence?

A. Yes.

Q. You will notice this form does not provide that the lessee shall have exclusive use of the vehicle. Do you think that is a safe provision for a common carrier of general commodities who holds a duty to the shipping public and the general public, to have it in a lease?

A. In other words, do I think that is a part of the lease?

Q. Yes.

A. It is actually a part of the lease. It is understood we are the only ones who have the use of that particular lease.

Q. It is not a legal requirement, according to the way this lease is drawn.

A. That is correct, sir.

Q. How do you protect yourself in using this kind of a lease? You pay by your schedule according to weight. Now, in the parlance of the trucking industry you have a horse to pull a trailer, don't you?

A. Yes.

Q. How do you protect yourself as against using a horse which is too light in its capacity to pull the load that you are going to pay this man for?

A. By a definite check.

Q. Where is this provided for in the check that your [fol. 3030] agents make?

A. That is in your mechanical inspection section, sir.

Exam. Lawton: Can't you develop most of this through Mr. Smalley and let this man catch his plane?

Mr. Arpaia: I think we ought to let him catch his plane.

Exam. Lawton: Does anyone else have anything?

You are excused.

(Witness excused.)

J. F. SMALLEY resumed the stand and testified further as follows:

Exam. Lawton: Who is next in cross-examining Mr. Smalley?

Cross-Examination (resumed)

By Mr. Pou:

Q. Mr. Smalley, I am not going to ask any questions about your own operation, I believe that has been pretty fully described, but I do want to ask about something with which you are pretty familiar which does relate to leasing.

Are you familiar with the practices of some carriers of fruits and vegetables—that is exempt commodities—who operate northbound from Florida, and who on return trips transport general commodities for compensation under the guise of leasing their vehicles to shippers?

A. Yes, sir; I have heard of some practices of that description. I have not personally seen any such, but the Florida Railroad Commission inspectors have called my at- [fol. 3031] tention to such practices and I do know that they exist. To what extent I am not qualified to say.

Q. You have heard of a good many of them, have you not?

A. Yes, sir.

Q. And you do know it is a prevailing custom to some extent, at least?

A. Yes, sir.

Q. How many years has that been going on, if you know?

A. It has been going on for a long time. I would say there have been more abuses in that direction in the past two years than existed prior to that time.

Q. You would say, then, that based on your knowledge, that that kind of a thing is probably increasing in extent?

A. I would say so for the reason that equipment owned by exempt carriers and private carriers is generally increasing. Since the war they have been able to purchase new equipment.

Q. That kind of business has taken business away from authorized carriers on southbound carriage, has it not?

A. Yes, sir.

Q. And caused your company and other authorized carriers in that section to lose business to which they are legally entitled; is that true?

A. That is correct, sir.

Q. If regulations could be adopted to govern and prohibit that kind of leasing, you would favor such provisions [fol. 3032] as that, wouldn't you?

A. Yes, sir.

By Mr. Burton Wheeler:

Q. That is, individuals or private owners who bring fruits and vegetables north, say, to Washington, New York, and so forth. They come here in any kind of truck that they might have, and then they lease it out to somebody on the way back?

A. Yes, sir. I could go a little further and state that we carriers feel that this practice has been on the increase since the war, for this reason: When the O.D.T. attempted to obtain a greater utilization of trucks, the leasing practices increased overnight. The owners of those vehicles found out in many instances where the freight was, they knew the contacts to make, and, in my opinion, that is the reason the abuses have been on the increase since the war. That coupled with the fact that more trucks have been in existence.

Q. You have been on some of these committees, as I understand it.

A. Yes, sir.

Q. Are you familiar with the different kinds of contracts used by other people outside of your group in Florida?

A. No, sir; I am not.

Q. You do know your contract is much more strict than most contracts, do you not?

A. We think it is. I don't know for a fact. I have not [fol. 3033] had occasion to examine contracts from all over the country.

Q. Did you not examine them when you sat on these committees?

A. We examined the contracts that the carriers in the territory we serve were using. We did not go outside of it.

Q. Do you think there should be uniform contracts?

A. Yes, sir; I think definitely a uniform contract should be prescribed by the Commission.

Q. As a matter of fact, in your practice you had much more strict and regular rules than what you recommended to the Commission, did you not, in the American Trucking Association?

A. Yes. It so happens that we carriers abide by rules that are more strict than the industry recommended.

Q. Why was it you did not make a recommendation along the lines to correct some of the abuses that you know had happened, and that you adopted in your own territory?

A. We introduced substantially the same evidence before the A.T.A. Leasing Committee as we are presenting here. We know that other people from all over the country presented their evidence to the committee. We can only assume that the committee came up with the best recommendation to fit the entire situation that they could.

Q. What they really came up with was a compromise to satisfy different groups in different parts of the country?

Mr. Allison: That calls for a conclusion and cannot be of any value.

[fol. 3034] Exam. Lawton: I agree with that. Objection sustained. It is obvious it must have been a compromise.

By Mr. Burton Wheeler:

Q. I notice in your statement that you show an amount saved my utilizing trip leases in 1947 of $204,637, and in

the nine months of 1948 $159,199. I think you stated, but I am not sure, the percentage of trip leasing that you do.

A. The trip leasing that we do works out approximately 20 percent of our entire operations. That is on a mileage basis. Revenuewise it would be a little greater because trip leases, as a rule, in our company, are longer hauls than our own average company hauls.

Q. If you could make a saving of $204,000 by 20 percent of your operations on trip leasing, why is it you would not increase the amount of trip leasing?

A. What we are trying to do in the utilization of trip leases is to balance our operation. Of course, it is cheaper to lease a vehicle one way than it is to operate your vehicle two ways. That is what we are trying to accomplish.

We do effect a sizable saving because if we had to operate our own vehicle on a trip one way, and then have to send it back empty, our cost applies two ways and our revenue one way. We are attempting to balance our operation, which is our only excuse for utilizing trip leases at all.

With the balanced operation we won't utilize the first [fol. 3035] trip lease.

Q. But the cost per mile in 1947 in a company vehicle you say is 20.64 cents as against—

Exam. Lawton: Didn't you previously go over that with the witness?

Mr. Burton Wheeler: No, I did not, with this witness. I am trying to find out how they figure the saving.

By Mr. Burton Wheeler:

Q. You base the saving on per-mile, don't you?

A. The saving is arrived at by multiplying the number of miles we saved by utilizing trip leases by our own company average per mile.

Q. I am not sure that I understand you. You figure that on the basis that if you had to make it two ways——

A. I so stated in the record.

Q. I didn't catch that.

Let me ask you this: Do the people you employ belong to a union?

A. Some of our employees belong to the union and some do not. We have union contracts from Jacksonville, Fla., and Miami, Fla. Otherwise we are non-union.

I might say further that we make no distinction insofar as wages are concerned. We pay exactly the same.

Q. You pay exactly the same wages whether they are union or not?

[fol. 3036] A. The rules, regulations, and pay are exactly the same.

Q. The reason I asked this is not that I am interested in whether or not you employed the union, but whether or not the fact that you employed these trip leases—if many did not belong to the union.

A. We do not know whether they are union men or not. We don't inquire as to that.

Mr. Burton Wheeler: I think that is all.

By Mr. Idol:

Q. Mr. Smalley, I notice a substantial increase in your cost per mile of your trip leased vehicles, 1947 versus 1948. Has the trip lease cost gone up considerably?

A. Yes, sir. I would like to explain there that every time we get a rate increase these fellows whose equipment we are utilizing on a trip lease basis know about it right quick and, of course, they approach us for increased compensation, and we think they are justly entitled to it. We are glad to revise these pay scales from time to time.

I would like to say further that the figure of 24.74 cents is a little bit out of line. I discovered after the exhibit was made that the employee who was delegated the duty of making the exhibit had taken all of our trip lease form of contracts and on the one hand had added all the miles and on the other had added all the compensation, and there are some payments included for delivery which actually should not be included in the over-the-road costs.

[fol. 3037] Q. Do you know what the extent of the error is, Mr. Smalley?

A. I did not have time before I left to trace it down. I should say the figure should be approximately one and a half cents lower than it is.

Q. I believe you said you were familiar through conversation with the fact that some of these exempt haulers come back from the North with their vehicles and drivers leased to shippers.

A. I said I knew that practice existed. I didn't know to what extent.

Q. Have you heard of any prosecutions for that in your territory, Mr. Smalley?

Mr. Allison: Will counsel define prosecutions by what agency?

Mr. Idol: By the Interstate Commerce Commission.

The Witness: I don't know of any direct prosecutions. I know that warnings have been issued by the Commission representatives in quite a few instances.

Mr. Idol: That is all.

By Mr. Nisbet:

Q. Mr. Smalley, do you have your Exhibit 40 before you?

A. Yes, sir.

Q. You show there total over-the-road type lease-miles operated. Do you see that?

A. Yes, sir.

Q. Does that include both interstate as well as intrastate operations?

[fol. 3038] A. Yes, sir. All figures shown are systemwide without any breakdown as between inter and intra.

Q. So I take it it follows that you utilize the leasing practice both in interstate as well as intrastate operations?

A. Yes, sir; that is true. However, the great majority is interstate.

Q. Does the State of Florida, or its regulatory body, have any rules or regulations concerning the utilization of trip lease vehicles?

Mr. Wells: Mr. Hamil is going to cover that. Would you mind addressing it to him?

Exam. Lawton: Is that the Florida Commission witness?

Mr. Wells: Yes, sir.

By Mr. Nisbet:

Q. Will you refer to your Exhibit 42?

A. Will you describe it by name, please?

Q. The trip lease form.

Near the center of the page it refers to the rental stipulation. Under what is designated as No. 2 it states "Lessee shall pay a rental to the lessor as follows," and it refers to blank cents per mile, and then follows, "Or flat charge for the trip."

Do you see that, Mr. Smalley?

A. Yes. That flat charge is put in there because occasionally it is necessary to trip lease on a very short haul [fol. 3039] and you can't compensate a lessor for a very short haul on a mileage basis very satisfactorily. It is just practically impossible.

There are instances where it is necessary to agree on some stipulated sum because the persons to whom you lease —the owner is certainly entitled to appropriate compensation for the use of it, and these rates I have shown on another exhibit will not apply on a very short haul.

Q. What sort of a basis is used to arrive at the agreed flat charge in those instances you have told us about?

A. Well, both parties get together and agree. They negotiate between themselves, or the company representative and the owner of the vehicle agree on some minimum fee for a short haul.

Q. What is taken into consideration, if you know, in arriving at that?

A. Mainly the time element. Of course the miles and time element, and size of the truck and load, and all those factors, are taken into consideration.

Q. But you say the time element is the primary consideration?

A. That is true. If you are going between two cities you cannot make the time that you can on a long haul over-the-road operation. The time element comes more into play under such a circumstance.

Q. But I take it that your occasions for renting leased equipment on that sort of basis are infrequent as far as your company's operation is concerned?

[fol. 3040] A. Yes, sir; very infrequent.

Q. In your direct testimony you referred to gypsy operators, I believe, did you not, Mr. Smalley?

A. I believe I did.

Q. What did you have in mind when you used the words "gypsy operator"?

A. I had in mind an owner of a truck who drove it himself, and who attempted to lease that truck to a carrier, and upon arrival at destination attempted to release to another carrier. In other words, an itinerant trucker who more or less has no headquarters but runs wild, so to speak, all over the territory in which he may operate.

Q. Do you have knowledge that such operators are in existence and operating in the State of Florida today?

A. We have them come into the State of Florida occasionally, but due to some sad experiences we had during the war when we leased that type of people we discontinued the practice.

Q. Would you say that is the general situation so far as the certificated carriers in Florida are concerned?

A. I believe the other certificated carriers have the same views as our company. I don't know as to other parts of the country.

Q. You have not noticed any increase in the so-called gypsy operations in your State?

A. No, sir; I have not. I would like to say that during our peak seasons is when they come in most frequently.

[fol. 3041] Q. Getting back again to your total trip lease miles operated, and having in mind only interstate operations, can you give us any estimate as to the percentage performed by the so-called exempt carrier as distinguished from private carriers?

A. It would be very hard to do. I have not made any study of our records to determine that. It would be awfully hard to even hazard a guess.

Q. During the time that you have utilized the vehicles under lease, of the exempt carriers, have you had any experience where one of those lessors has subsequently

leased his vehicle to ones of the shippers without your knowledge?

A. No, sir. If they have done it it has not come to our knowledge. I don't know of any instances in which any owner-operator we have leased has engaged in such a practice.

Q. Generally, do the drivers of those exempt vehicles, which are leased to your company, have contact with your shippers or their representatives?

A. No, sir. They do not have any contact with our shippers except probably on an occasion where we had a solid load from one point to another, that it was advisable in order to save terminal handling to unload it right off the trip lease vehicle. In that instance our driver might go with that driver to effect delivery and if he was short handed we might add to the lease consideration an amount for him to assist in the unloading.

[fol. 3042] Mr. Allison: Mr. Examiner, I dislike not to afford counsel all the opportunity possible, but we are rushed for time. We have been here five days, and we have some other witnesses, and I believe that more than one cross-examination by the same counsel of the same witness is going to unduly delay us.

Exam. Lawton: I don't believe this counsel has cross-examined the witness.

Mr. Allison: I beg your pardon. I was speaking only in the interest of saving time.

By Mr. Arpaia:

Q. Mr. Smalley, if you did not have the type of operation that you have for this seasonal demand, and with this unbalanced freight which exists because of the unbalanced conditions in Florida, would you use trip leases?

A. If our traffic were balanced, I testified we would have no occasion to use a trip lease.

Q. In your particular case there are factors which prevent you from balancing your traffic?

A. Yes.

Q. From your observation and experience in motor transportation do you think trip leases are good for the industry?

A. In certain instances I think they are. As an overall policy I would not be able to answer.

Q. When you refer to certain instances are you referring to the tax situation that exists in your State?

[fol. 3043] A. I know of the situation definitely existing in our State. There may be other situations in other parts of the country that may be equally outstanding.

Q. In the absence of strong factors of that kind, do you think it is possible to develop conditions in motor transportation and develop sound growth, by the use of trip leases?

A. That is a pretty hard question to answer. I do know of many abuses that have gone on in the past.

I would just like to say that—in fact, I would not like to state an opinion. I think the I.C.C. is certainly capable of dealing with this situation and promoting the proper rules and regulations to protect the industry.

Exam. Lawton: In other words, you have no opinion; is that correct?

The Witness: That is right.

By Mr. Arpaia:

Q. Maybe you or your counsel objected to the word "gypsy." You don't know what happens to that exempt or private carrier until he comes to you, do you?

A. No, sir; we do not.

Q. He goes up north with a load of fruits and vegetables. Is that right?

A. That is right.

Q. He goes to New York. When he goes to New York there is no reason why he cannot hire himself out to some carrier if he wants to go with a load to Boston?

[fol. 3044] A. That is right.

Q. And then take another load back to Albany and back to New York; is that true?

A. That is easily possible.

Q. You know textiles are processed in the States of Rhode Island and Connecticut?

A. Yes.

Q. And there is a heavy textile movement south?

A. I am not familiar with it. I understand there is.

Q. If that man after he leaves his load of fruits and vegetables goes around from point to point to a gas station and offers his services to a carrier on any method of compensation, whether percentage or flat fee, or per mile, or per hour, day, or week, you don't know anything about that?

Mr. Wells: Mr. Examiner, I object to this line of examination. It is hypothetical. The witness says he doesn't know.

Exam. Lawton: He said he didn't know.

Mr. Arpaia: I want to bring out he doesn't know and lay the foundation for another question.

Exam. Lawton: You have brought that out.

By Mr. Arpaia:

Q. When this man picks up a load of textiles in Providence or eastern Connecticut and takes it to Paterson, N. J., and from that area takes another load down to Baltimore, and from there another load to the State of North Carolina, and another load down to Atlanta, you don't know how many hours that fellow worked before he got to you, do you?

[fol. 3045] Mr. Wells: I object. There is no evidence that one of the trucks Mr. Smalley has been talking about has engaged in that practice. No basis in the record for that assumption.

Mr. Arpaia: This is an investigative procedure.

Exam. Lawton: He may answer.

The Witness: Certainly we don't know what has gone on in his trip to and from the North before he gets back to Atlanta, but we do know—we have satisfied ourselves, in other words—he has had his proper rest before we utilize his services, and if every carrier he has leased to has done the same thing I dont see that there have been any violations.

By Mr. Arpaia:

Q. But you don't know that?

A. No.

Q. That man was a gypsy before he got to you. You want to dignify him by calling it a trip lease?

Mr. Diehl: I object to the same thing that Mr. Wells objected to. Here the man is using the word "gypsy" referring to a man the witness' company employs, and the witness testified his company has employed no such people.

By Mr. Arpaia:

Q. You say what you do to find that the man has had his proper rest is to examine the log of his previous employer. How do you get that?

A. The first thing our terminal manager does when the driver presents himself is to ask for his log.

[fol. 3046] Q. He left the log with his previous employer.

A. He certainly makes a carbon copy of his log. He has a copy in his book.

Q. You insist that he make a copy?

A. He should.

Q. You have heard testimony that they don't keep logs at all in certain instances?

A. Let's say he doesn't have a log. Then we say, "All right, leave your truck here and come back in eight hours. Come back at 9 o'clock and we will dispatch you southbound."

Q. Now, I will ask you the question I started to ask Mr. Sanders. Who makes this inspection?

A. The truck equipment inspection is made by our maintenance department.

Q. Well, do you have a maintenance department in Atlanta?

A. Yes, sir.

Q. How many employees in that maintenance department?

A. Four, I believe.

Q. Who is in charge of it, a foreman or some person out of the shop?

A. A thoroughly qualified mechanic.

Q. When he makes his inspection does he fill in this information here?

A. Yes, sir.

Q. A copy of this goes to your main office; is that right?

[fol. 3047] A. Let me clarify this. The first procedure is a set of these forms presented to our driver. He goes to

our shop. Our maintenance superintendent completes the part of the form entitled "Inspection and Instructions." The paper then comes back to the terminal office where it is checked to see that the driver has had a physical examination and produces documentary evidence to that effect.

Then the rest of the form is completed in which the driver is instructed as to the route over which he shall travel, the point at which he shall obtain his eight hours' rest. The contract is completed and after the vehicle is loaded he is dispatched.

Q. How are you or anybody in superior authority able to determine whether the power unit which is attached to that trailer is of sufficient capacity to draw the load?

A. That is just good operating sense, I would say. I don't believe we have any employees who would lease a unit that did not have the proper power or proper brakes or adequate tires or any other characteristics that were not proper.

Q. You have heard testimony here that these trip lessors are all over the highway with improper equipment, and particularly with power units that are not adequate, sufficient to pull the load which they carry.

A. I have heard testimony to that effect.

Q. You say that in your case your maintenance men make sure that that provision is observed, that that condition exists?

[fol. 3048] A. That is correct.

Q. But it is not so stated in this form?

A. I don't see any particular advantage you would have by putting it in the form. It is commonsense. It is an every-day operating problem that any person in the transportation business would certainly see that the equipment is proper before they execute a lease.

Q. You think that all the carriers, then, are using that same practical operating judgment with reference to this one problem, in your area?

A. I would certainly think they are. We have some pretty keen competition and boys that know what they are doing down there.

Q. You have been with your company since 1927; is that right?

A. 1929.

Q. How many units did your company have in 1929?

A. I didn't catch that.

Q. How many units did your company operate or own?

A. In 1929?

Q. Yes.

A. Six.

Q. How many did you have in 1942?

A. I couldn't answer that without benefit of some records.

Q. Approximately.

A. I would say approximately 125.

Q. So that between 1929 and 1942, without the use of gypsies, your company had grown from an operation of [fol. 3049] six vehicles to one of 125?

A. That is correct, sir.

Q. You didn't buy any vehicles during the war, did you?

A. Yes, sir.

Q. You were able to buy them—you were lucky.

A. Yes, sir.

Q. How many did you acquire between 1942 and November, 1945?

A. I would say approximately 100.

Q. And since 1945——

A. About 75.

Q. So that your company has shown a continual growth throughout all this period; is that right?

A. Yes, sir.

Q. Now, between 1929, or 1927, when this company was organized, and 1942, that company made money, didn't it?

A. It was pretty tought going but we managed to break even and make a small profit.

Q. They were able to increase their investment; is that right?

A. That is true.

Q. And serve the shippers in that area?

A. Yes, sir.

Q. You have not made any real effort to balance your freight if they wanted you to take all kinds of freight; isn't that true?

A. As I testified previously, we have attempted many times to handle fresh fruit and vegetables. It is an im-

[fol. 3050] practical thing to attempt to try to do it. We have found out from actual experience.

If we lessen the service on our general traffic it is possible that we might be able to handle some fresh fruit and vegetables.

Q. How would you lessen the service? You mean you would have to buy more equipment?

Mr. Allison: Mr. Examiner, it is repetitious.

Exam. Lawton: It is getting cumulative, repetitious, and argumentative. Other counsel, I assume, want to do some cross-examining.

Mr. Arpaia: I didn't think that was covered.

Exam. Lawton: Yes, it was.

Is there anything further?

Mr. Arpaia: I don't think it would pay to pursue this any further.

Mr. Eldred: Mr. Examiner, may I ask one question?

By Mr. Eldred:

Q. What percentage of the trucks you lease are refrigerated trucks?

A. That would be a very hard question to answer. Most all that we lease are what we term semi-refrigerated. They have vents in the bodies and small blowers. They are certainly not capable of handling perishable products but would require a low temperature.

Q. They are used in the transportation of fruits and vegetables?

[fol. 3051] A. Yes, sir.

By Mr. Lieberman:

Q. As I understand your testimony, your company was engaged in the transportation of furniture. I presume you mean household goods.

A. We did in 1927 and 1928.

Q. Was one of the reasons your company gave up that type of transportation, because you were unable to use that type of equipment in your general freight operation?

A. That had something to do with it. It is practically impossible to use specialized equipment for general purposes, and vice versa.

Mr. Lieberman: Thank you.

By Mr. Todd:

Q. Mr. Smalley, did you hear the answers of Mr. Sanders to the questions which I asked him with respect to the plan that the carriers have developed down in Florida?

A. Yes.

Q. Would you subscribe to those same statements if I would ask you the same questions?

A. Yes, I believe I would.

Q. When you were testifying on direct examination with respect to the balance of traffic being heavier southbound than northbound, were you including just general freight or were you also including the movement of fresh fruits and vegetables?

A. General freight.

Q. If you would include in your calculations the fresh [fol. 3052] fruits and vegetables that are moving northbound, what would be the situation?

A. Then we would have a terribly unbalanced operation northbound.

Q. So you are really shipping more fresh fruits and vegetables out of Florida than general freight is coming into the State; is that correct?

A. That is correct.

Q. Do you know what percentages of the oranges, for example, are shipped to the northern markets from packing houses as opposed to the—or do you have another witness—

A. We have another witness.

Mr. Allison: We have another witness.

Mr. Todd: Then I will withdraw the question and ask the other witness.

Exam. Lawton: Anything further?

Mr. Allison: No, sir.

Exam. Lawton: You are excused.

(Witness excused.)

Exam. Lawton: We will take a short recess.

(Short recess.)

Exam. Lawton: Come to order, gentlemen. The hearing is resumed.

ED T. HAMIL, was sworn and testified as follows:

[fol. 3053] Exam. Lawton: You all have copies of the prepared testimony of the witness Hamil, who has been sworn?

Is there any objection to it being copied in the record?

Off the record.

(Discussion off the record.)

Mr. Eldred: We will let it in in the interest of saving time, Mr. Examiner.

Direct examination.

(The statement is as follows:)

Q. State your name and address.

A. Ed T. Hamil. My address is Post Office Box 810, Tallahassee, Fla.

Q. What is your official position and how long have you been employed by the Florida Railroad and Public Utilities Commission?

A. I am superintendent of the Motor Transportation Division of the Florida Railroad and Public Utilities Commission. I have been employed by that Commission for the past 15 years.

Q. What is the Florida Railroad and Public Utilities Commission?

A. It is the regulatory body of the State of Florida, having jurisdiction over transportation within the State, both rail and motor carrier. It also is charged with the duty of presenting facts to the Interstate Commerce Commission and participating in proceedings affecting the public [fol. 3054] interest when transportation of commodities from Florida is involved.

Q. As superintendent of the Motor Transportation Division of the Florida Commission, what are your duties?

A. I have direct charge of, and am responsible for all motor carrier operations conducted by certificated carriers under the jurisdiction of the Florida Railroad and Public

Utilities Commission and have direct charge of all transportation law enforcement.

Q. What is your training and experience in connection with motor carrier operations?

A. For six years I was a police officer and deputy sheriff in Putnam County, Florida, located in the central peninsula part of the State. Next, for four years, I was chief traffic officer for Seminole County, with headquarters at Sanford, Fla. Since 1933, I have continuously been employed by the Florida Railroad and Public Utilities Commission in its Motor Transportation Division.

Q. During your experience of approximately 25 years, have you had occasion to observe the development and expansion of transportation by motor vehicles in and from the State of Florida?

A. I have.

Q. Will you please state the classifications of motor transportation that is provided for under the Florida Transportation Act.

A. The Florida Motor Transportation Act classifies [fol. 3055] motor carriers into three classifications. First, common carriage. Second, contract carriage, and thirdly, for-hire permit carriage.

Q. Will you please state how many common carriers, operating under a certificate of public convenience and necessity issued by the Florida Railroad and Public Utilities Commission, are domiciled in the State of Florida?

A. Sixty-seven.

Q. Generally speaking, are common carriers of general commodities restricted as to route and schedule of operation?

A. They are.

Q. According to the records of your Commission, how many pieces of motor equipment are owned and operated by the common carriers domiciled in Florida?

A. 1,812 in number.

Q. Are you familiar with a class of motor carrier operators who are engaged, seasonally, in the transportation of agricultural products from Florida to market points located beyond the State, such carriers being commonly known as exempt carriers?

A. I am.

Q. Is this class of motor carrier under the jurisdiction of the Railroad and Public Utilities Commission?

A. They are not. The Florida Transportation Act exempts motor vehicles engaged exclusively in the transportation of agricultural and/or horticultural commodities. [fol. 3056] Such carriers, however, are under the general police regulations of the State of Florida.

Q. Are the exempt commodities that you refer to practically the same as those provided for under section 203(b)(6) of the Federal Motor Carrier Act?

A. They are.

Q. Do the motor common carriers who transport general commodities transport fruits and vegetables from Florida producing areas to the market point?

A. They do not.

Q. Will you please explain why the common carriers do not transport such commodities?

A. At the onset, I would like to make it clear that agricultural products moving from the agricultural-producing areas of Florida move in volume, and seasonally, in truckload lots, in the majority of instances under refrigeration, directly from packing houses to the consuming markets, such markets being located in the East and Middle West.

The motor common carriers domiciled in Florida operating over fixed routes and on fixed schedules are unable to handle this traffic; first, because they are unable to perform transportation from origin to destination point. Secondly, because they do not have adequate motor equipment to handle the large volume which seasonally moves. Thirdly, they maintain and operate very few refrigerated units and consequently do not hold themselves out to perform this class of transportation. The Florida State Marketing [fol. 3057] Bureau report for the season 1947-1948 shows a total of 46,155 truckload movements of fruits and vegetables moving from Florida in interstate commerce. This transportation, in the majority, was performed by what we commonly know as "exempt carriers," moving to marketing points in the Middle West and East.

It is certainly understandable that the regulated common carriers could not avail themselves of a sufficient amount of equipment to handle this seasonal movement. Over a period

of years so-called exempt carriers have held themselves out to transport these agricultural products, and the agricultural industry of Florida has grown to depend on this class of carrier for the movement of their products to marketing points. The majority of these exempt carriers are one and two-truck operators; however, a number of them are fleet operators owning as many as 15 or 20 pieces of equipment, especially adapted to the transportation of agricultural products. Generally, these carriers are reputable, dependable operators.

Q. Does the Railroad and Public Utilities Commission of the State of Florida have rules and regulations governing vehicle leasing and interchange of carriers under its jurisdiction?

A. It does. The Commission's rule is contained in the prepared exhibit of Director Blanning, in the "Abstract of State Laws and Regulations pertaining to Lease and Interchange of Vehicles by Motor Carriers."

[fol. 3058] Q. What rule does the Commission have as it relates to the trip leasing of exempt carriers to certificated carriers?

A. Our Commission permits certificated carriers to lease private or exempt vehicles under the following provisions:

1. That the certificated carrier execute a written trip lease with the private or exempt carrier, describing therein the vehicle leased, the point of origin and destination; that the vehicle complies in every respect with safety rules and regulations; that the liability to the public in all respects is that of the certificated carrier.

2. That the vehicle be identified with a trip lease identifying windshield sticker issued to the certificated carrier by the Commission.

3. That the vehicle bear an appropriate sign, identifying the leased vehicle as being operated under the control of the certificated carrier.

4. That the driver have in his possession, for inspection, a copy of the lease agreement.

5. That the certificated carrier assume all of the responsibility and liabilty for the operation of the leased vehicle.

Q. What do the records of the Railroad and Public Utilities Commission show as to the number of trip leases performed by regulated carriers for the years 1947 and 1948?

A. The records of the Commission show that for the year 1947 there were 6,711 trip lease operations conducted by [fol. 3059] certificated carriers, and 9,334 for the year 1948.

Q. What is the experience of the enforcement division of the Florida Commission as it relates to violations of transportation laws of these trip lease operations by private or exempt carriers to certificated carriers?

A. Our records reflect that there have been very few violations of the Commission's rules and regulations where private or exempt vehicles are leased to certificated carriers.

Q. What effect would result if a rule were promulgated, that would prohibit the certificated carriers from trip leasing private or exempt carriers?

A. In reply to your question, I would like to first state that due to the peculiar geographical position of Florida, the preponderance of traffic moved by certificated motor carriers is southbound. The movement of agricultural products are seasonally northbound. While the rates charged by exempt carriers for the transportation of agricultural products to northern markets are not regulated by any regulatory body, they are in a sense controlled by competition among that class of carriers. Should a rule be promulgated that would prohibit the southbound leasing of these trucks to certificated carriers, it would mean that the exempt carrier would have to return to Florida empty. This would immediately result in this class of carrier increasing his rates to balance the non-revenue return miles. This, of course, would be passed on to the shipper who pays [fol. 3060] the bill. On the other hand, if certificated carriers were prohibited, by rule, from leasing these exempt carriers southbound the immediate result would be a petition for increase in common carrier rates because the same yardstick as to the flow of traffic would apply to the common carriers. It is then understandable that such a rule would adversely affect the economics of the whole State of Florida.

Q. Is it your opinion that the Interstate Commerce Commission should promulgate any rule that would affect the practice of trip leasing by certificated carriers?

A. Definitely not. It is my opinion that a reasonable rule should be promulgated that would control such trip leasing and should not be too restricted. I believe that the rule should follow, generally, that proposed by the American Trucking Association and that in the promulgation of a rule that serious consideration should be given by the Commission so that the economics of the country will not be adversely affected, and, of course, where we are concerned Florida will not be adversely affected.

Mr. Wells: The witness is available for cross-examination.

Cross-examination.

By Mr. Eldred:

Q. Mr. Hamil, on page 3 you state that "The majority of instances the agricultural products moved out under refrigeration." Do you mean that those trucks are equipped with refrigerating units, that is, temperature control units, or [fol. 3061] do you mean that those have vents and blowers?

A. Where the word "refrigeration" is used, it is intended to indicate that the agricultural commodities being transported must have some degree of refrigeration.

Q. When you say "must have some degree of refrigeration"——

A. Either by ventilation, blower system, or ice.

Q. How many of the units, if you know, are equipped with mechanical refrigerating units, as distinguished from the blowers and the vents?

A. Very, very few; that is for blower refrigeration, low temperature control.

Q. Yes. Now, on the last page you state that it is your contention that if the regular route common carriers were unable to lease the exempt carriers, that they would be required to increase their rates.——

A. I think that statement indicated that should a rule be promulgated that would prohibit trip leases it would immediately result in both class carriers, the exempt carrier who

holds himself out to transport agricultural products for hire and the common carrier, probably increasing rates to offset the non-revenue miles they would have to operate, of necessity.

Q. You heard the testimony of Mr. Smalley that he had just started using exempt carriers in 1942, did you not?

A. I did.

Q. Has the Florida State Commission reduced the rates [fol. 3062] or caused the common carriers of general commodities to reduce their rates since 1942?

A. I don't believe that they have, sir.

Q. So if there is any benefit it was not passed on to the public?

Mr. Allison: I object. It is an unfair prejudical question and asks for a conclusion and there are many established factors that go into situations of that sort.

Exam. Lawton: What is the last question and the previous answer?

(Record read.)

Exam. Lawton: Benefit to whom?

Mr. Eldred: I will rephrase it.

By Mr. Eldred:

Q. If the carriers of general commodities are able to reduce their costs of operation that reduction in cost was not in any way reflected in the rates?

Mr. Allison: To which we object on the grounds previously stated, and the further ground that the question ignores the shop increase, labor costs, all costs of equipment and operating and therefore is prejudicial.

Mr. Diehl: I would like to add to the objection the fact that it ignores the possibility of the carriers keeping down the level of rates below what it might have had to be increased to were it not for that.

By Mr. Eldred:

Q. I will ask this: Has the Florida Commission given [fol. 3063] any consideration to requiring the common carriers to reduce their rates as a result of using the exempt carriers for return hauls?

A. They have not.

Q. If the rates on fruits and vegetables northbound were compensatory would there be any necessity for the common carriers to lease going southbound?

Mr. Wells: What rates are you speaking about when you say "if the rates were compensatory"?

Mr. Eldred: The rates of the exempt carriers.

Mr. Wells: There is no evidence here to show the rates of the exempt carriers are not compensatory to them.

Exam. Lawton: I think the point is well taken.

Mr. Eldred: If they are not compensatory to the regular route common carriers.

Mr. Wells: They don't have any rates. There is no factual basis.

Mr. Eldred: The testimony of the witness Smalley was to the effect that his company would not transport fruits and vegetables northbound because the rates and charges were non-compensatory to his company.

Mr. Diehl: I submit that is not all the answer Mr. Smalley gave. He explained what his company would have to do by way of investment.

Mr. Eldred: This witness has made certain statements.

[fol. 3064] Mr. Wells: I have no objection to your cross-examining him on those statements.

Exam. Lawton: I don't see anything here about rates. I haven't had a chance to read his testimony.

Mr. Eldred: On page 5, the second answer on the page: "On the other hand, if certificated carriers were prohibited, by rule, from leasing these exempt carriers southbound, the immediate result would be a petition for increase in common carrier rates because the same yardstick as to the flow of traffic would apply to the commom carriers. It is then understandable that such a rule would adversely affect the economics of the whole State of Florida."

Exam. Lawton: I didn't see that.

The Witness: I can answer the question.

Exam. Lawton: All right.

The Witness: I think any common reasoning would indicate, if you are familiar with the geographic lay of Florida, and the flow of traffic of the general commodities southbound, and agricultural commodities northbound, that the

existing rates of transportation for agricultural products north and the general commodities south, the combination of all these advantages, if you want to term them advantages—if they are eliminated what would be the answer? They would certainly have to have an increase in rates.

By Mr. Eldred:

Q. The exempt carrier would but why would the common [fol. 3065] carrier have to have an increase in rates if he were permitted to have a rate that would meet his costs going northbound?

A. He would have to avail himself of more equipment.

Q. That is true.

A. And a considerable portion of the time a portion of the equipment would be lying idle.

Q. However, the carriers that testified here today did not practice leasing exempt carriers—you heard their testimony—prior to 1942.

A. I think circumstances and conditions have caused a change in the general picture of transportation,

Q. In what way?

A. Florida has increased in population, its agricultural production have increased, costs have increased generally, and it is my thought that the cost of operation has increased at a greater rate than the increase in rates.

Q. And yet these carriers have indicated by their testimony that they are just beginning to make money.

A. That is the testimony offered by the carrier.

Q. You stated as your reasons that the production of fruits has increased.

A. Yes.

Q. In addition to that the southbound traffic has increased; isn't that true? And the population has increased? [fol. 3066] A. There is an off balance—that is, an increase during the winter months of general commodities southbound.

Q. Well, now, what makes you think, sir, that the common carrier, if he could without an increase exist prior to 1942 without the use of the exempt carrier, could not do so today?

A. I didn't say he didn't have some increase in rates.

Q. Do you think it is necessary for his continuance to be able to continue to lease exempt carriers?

A. I think there are a number of reasons why he should have the availability of this class of transportation.

Q. I asked a question, Mr. Hamil, whether or not it was necessary for the existence and continuance of service by common carriers to be able to lease the exempt carriers?

A. Yes, I do think it is necessary that he have the availbility of that facility of transportation.

Q. You do?

A. Yes.

Q. What are your reasons?

A. Just as stated, due to the flow of traffic.

Q. Although the witness Smalley said the flow of traffic was essentially the same today as it had been for the last years. You heard him testify to that, did you not?

A. I think that it has increased.

Q. The volume of traffic?

A. The volume has increased.

[fol. 3067] Q. That is the only thing?

A. That is one of the things.

Q. What else?

A. That is the only thing I think of right now.

Q. Would you recommend to the Commission the procedure followed by the Florida carriers as represented by Mr. Smalley in the handling of their leasing arrangements, and the procedure that they go through, as compared to that recommended by the truck leasing committee of the A.T.A.?

A. Well, the Florida carriers have gone further than the proposal of A.T.A., but we found the practice of the Florida carriers as relates to lease practices has been very, very satisfactory from a regulatory standpoint, and from an enforcement standpoint.

Q. From your point of view would you rather have that type of practice and lease, and everything, as contrasted to that proposed by the A.T.A.?

A. So far as we in Florida are concerned.

Q. Do you think that the rules which the Florida people are proposing are too restrictive?

A. No.

Mr. Allison: Just a moment.

Mr. Eldred: I withdraw that. I didn't mean to imply that.

By Mr. Eldred:

Q. What I meant to say was: Do you think that the rules and procedure which the Florida carriers are using at [fol. 3068] the present time are too restrictive?

A. I don't think they have found it too restrictive, and certainly we wouldn't want to criticize it.

Q. I am asking you.

A. I don't think they are.

Mr. Diehl: You are referring to Florida when you make that statement and not referring to any other part of the country?

The Witness: No, sir; I am not.

Mr. Allison: Go ahead.

By Mr. Eldred:

Q. Mr. Hamil, do you have any record as to the number of different exempt carriers that transport fruits and vegetables out of Florida?

A. They are not under the jurisdiction of the Florida Railroad and Public Utilities Commission of that State. They are specifically exempt.

Q. So you have no record of the number of private carriers?

A. No, sir.

Mr. Eldred: I believe that is all.

Mr. Allison: I have one or two questions.

Redirect examination.

By Mr. Allison:

Q. Did you hear the apprehension voiced by Mr. Smalley that the disruption or prohibition of their lease practices might result in an increase of gypsying—and I use that term advisedly—with attendant law enforcement problems?

A. I don't think there is any question but what it would [fol. 3069] increase the problem.

Q. And you heard his statement as to the difficulty of accounting, payment of mileage tax, and law enforcement if the common carriers attempted to run off their routes and transport exempt commodities?

Mr. Eldred: I object to that. It is a State authority regulation entirely and has no bearing whatsoever on this proceeding.

The Witness: We can see a chaotic condition created if that be the case.

By Mr. Allison:

Q. Your job would be much more difficult, would it not?
A. Yes.

Recross-examination.

By Mr. Eldred:

Q. So the record will be straight, how would your job be so much more difficult if what happened?

A. It would increase the policing problem if the common carriers were allowed to run wild and not be limited.

Q. There is nothing before this Commission to do that, is there?

Mr. Allison: May I state that Mr. Blanning testified, and I believe that subject was in his testimony, and Mr. Smalley explained that in an attempt to balance this movement his company had considered attempting to transport agricultural products. I asked the witness if he heard that, and should the common carriers attempt to do that [fol. 3070] would the policing problems be more difficult.

By Mr. Pou:

Q. You have referred to the vehicles used by the vegetable haulers during the peak season in hauling fruits and vegetables to northern points, and leased by them to northern carriers during the same season but hauling general commodities southbound.

A. Yes.

Q. Can you tell us what use is made of those vehicles during the balance of the year other than the peak season?

A. I might say the recognized exempt carriers domiciled in Florida, when the vegetable and fruit season is on the wane there, usually move into the peach crop in Georgia and follow the season of agricultural commodities into the North.

Q. Then they go to South Carolina next, and then North Carolina?

A. Yes.

Q. And in that way are they pretty well occupied throughout the year until it is time to return to Florida?

A. I would say seven to nine months out of the year they are probably occupied in the transportation of agricultural commodities.

Q. I assume you do not know whether or not they continue on return movements—continue while hauling peaches and other agricultural commodities in other States—to [fol. 3071] lease to other authorized carriers, or do you know?

A. You have a peculiar situation. After the production season in Florida is over the agricultural products from the other States come south.

Q. Florida has to import some agricultural commodities during the summer, then?

A. Yes, that is correct.

Q. Then, when those vehicles are moving south into Florida to haul agricultural commodities what use is made of them on return trips north?

A. From where the exempt carrier sits in the picture he will attempt to lease to a common carrier to see if he can obtain a load northbound. If not, he moves empty to his point of origin for another load.

Q. But during the summertime movement out of Florida to northern points is quite light, isn't it?

A. In a certain period it is.

Q. And the authorized carriers have vehicles of their own sufficient to meet that need during the summer months, have they not?

A. I would say generally they do, but they still have their offbalance general commodity situation.

Mr. Pou: I believe that clears up the point I had in mind.

By Mr. Edward Wheeler:

Q. You have a statement at page 3, "The motor common [fol. 3072] carriers domiciled in Florida operating over fixed routes and on fixed schedules are unable to handle this traffic; first, because they are unable to perform transportation from origin to destination point."

Could you give me a little further elaboration on that?

A. I will be glad to. Agricultural ommodities produced in Florida usually and generally originate at packing plants or points where the agricultural commodity is prepared for market. It moves from the point of origin to probably the New York market or the Boston market or the Chicago market. We do not have single-line regular route motor common carriers that can perform that type of transportation from point of origin to point of destination.

Q. Not even by interchange with other carriers?

A. That is the most impractical thing in the world. You can't interchange perishable commodities.

Q. Why not?

A. Simply because it is a commodity that does not lend itself to that type of handling.

Exam. Lawton: Once it is under refrigeration——

By Mr. Edward Wheeler:

Q. Is it handled by a tractor and trailer unit, or not?

A. In the majority of cases it is.

Q. Do you mean to tell me you can't disconnect the tractor from the trailer at the point of interchange and send [fol. 3073] the trailer on?

A. Carriers of that class have never worked out an arrangement whereby you could handle a trailerload through. You have different types of equipment on the road and it probably doesn't connect up.

Q. Don't you know, as a matter of fact, that equipment today is pretty much standardized into two or three classes?

A. I don't know—I do know that is not the practice today of interlining or interchanging equipment.

Q. Has it ever occurred to you that that need would be fulfilled immediately if the exempt carriers were placed under restrictions on the return trip?

A. That is speculative. I couldn't say.

Q. Do you know how long the so-called exempt carriers lay over in northern points waiting for return loads?

A. No.

Q. You don't know whether it is one day or ten days or fifteen days?

A. I couldn't know.

Q. So as a matter of fact, you don't know whether an efficient common carrier operator could handle this business with a considerably lesser number of vehicles than is now employed in this operation?

A. You will have to restate that question. I don't follow you.

Mr. Edward Wheeler: Will you read the question.

[fol. 3074] (Question read.)

Mr. Diehl: To which I object, Mr. Examiner. There is no basis here to indicate that the witness knows how many vehicles are handled by the exempt carrier, private carrier, or anyone else.

Exam. Lawton: Overruled.

The Witness: I don't know. I couldn't answer your question.

By Mr. Edward Wheeler:

Q. On page 4 you have a list of provisions under which you permit leasing of private or exempt carriers.

A. Yes, sir.

Q. The last of those provisions reads as follows: "That the certificated carrier assume all of the responsibility and liability for the operation of the leased vehicle."

What do you mean by that?

A. I mean exactly that, that that leased vehicle is his operation and not the operation of the owner-operator.

Q. Well, it is the operation of the owner-operator, isn't it?

A. No, it is not. Under the terms of the lease the owner-operator becomes a common carrier under the control and supervision of the certificated common carrier.

Q. Those rules would not apply, of course, outside of

your jurisdiction, so that when the man gets up north what arrangement he enters into there is no concern of yours.

[fol. 3075] A. These rules would — only to those carriers who are holders of appropriate operating authority from the Railroad and Public Utilities Commission of the State of Florida.

Q. Insofar as their operations in the State of Florida are concerned.

A. That is true.

Q. At the top of page 5 you state: "Our records reflect that there have been very few violations of the Commission's rules and regulations where private or exempt vehicles are leased to certificated carriers." What is the basis of that statement?

A. Through our enforcement division.

Q. Don't you know as a matter of fact that such private and exempt vehicles leased to certificated carriers are regularly and continuously violating I.C.C. rules and regulations?

A. I will ask you in what respect?

Q. As the hours of service regulation.

A. I will answer your question this way: So long as their operation is being conducted over the highways of the State of Florida they are not.

Q. It is limited to that?

A. That is as far as our testimony goes here.

Q. I see. So if the truck starts in New Jersey and makes a continuous run from New Jersey to Palm Beach or West Palm Beach, Fla., do you know whether or not, and you are not concerned as to whether or not that driver-operator [fol. 3076] within the hours of ser——ten hours or less within the State of Florida without taking the eight-hour rest period?

A. Should I assume that the operation was conducted under a lease to a certificated carrier?

Q. That is correct.

Mr. Allison: Mr. Examiner, may I object to the line of questioning since the witness' testimony is related to that of the witness Smalley and counsel propounding the question was not in the room when the witness explained, and it necessarily limits the scope of the testimony. It is

confined to Florida and based upon the type of lease arrangement the carriers have been using.

Exam. Lawton: You didn't hear Mr. Smalley's testimony?

Mr. Edward Wheeler: No.

By Mr. Edward Wheeler:

Q. May I inquire what you mean by a certificated carrier?

A. A carrier holding a certificate of public convenience and necessity from our Commission or the Interstate Commerce Commission.

Q. Are you referring to the irregular route common carriers who hold certificates from the Interstate Commerce Commission?

A. I am referring to the regular route common carriers.

Exam. Lawton: Will you read that last question and answer?

(Record read.)

Exam. Lawton: He has answered that.

[fol. 3077] Mr. Edward Wheeler: I don't think he has.

Exam. Lawton: Well, answer the question.

The Witness: I will further assume that the leased operator or the lessor was leased to a certificated carrier operating under the rules and regulations of the Railroad and Public Utilities Commission of the State of Florida.

By Mr. Edward Wheeler:

Q. Assume either way on that.

A. If he was operating under a situation set forth here by the Florida carrier under their lease arrangement, certainly we would be concerned with it.

Q. Suppose he is an out-of-State carrier.

A. That would be a baby for the enforcement of the Interstate Commerce Commission. That is, he would be purely an interstate carrier and subject to their primary jurisdiction.

Q. So your statement at the top of page 5 should be amended to include the assumption that the carriers involved and referred to therein are only those which are certificated by the State of Florida?

Mr. Wells: I don't think counsel understands the situation.

By Mr. Edward Wheeler:

Q. Is it possible for any certificated carrier to operate legally in the State of Florida without being certificated from the Interstate Commerce Commission?

A. Any carrier holding authority from the I.C.C. must register that certificate with the State of Florida and failure to do so constitutes a violation of the law, subject to [fol. 3078] arrest and prosecution.

Q. Is that assumption stated on the record necessary or unnecessary?

A. It was based on not understanding your statement correctly.

Q. What did you not understand about my statement?

Mr. Wells: I submit this is argumentative.

Mr. Edward Wheeler: I submit this witness placed a statement in the record here and when I asked a question with respect to it he states he has to make certain assumptions, and now he in turn is denying the assumption. I don't understand the situation.

Mr. Eldred: I am confused myself and I have paid strict attention.

Exam. Lawton: It is all very confusing, I think. Ask the question again.

Are you referring to the statement as to the violation?

By Mr. Edward Wheeler:

Q. Mr. Witness, when you made the statement at the top of page 5 of your testimony, to which we previously adverted, to what carriers did you refer?

A. To all carriers holding operating authority from the Interstate Commerce Commission registered with the Railroad and Public Utilities Commission of the State of Florida.

Q. Does that include every common carrier operating within the State of Florida?

A. It would take into consideration 67 common carriers [fol. 3379] operating in the State of Florida, regular route common carriers.

Exam. Lawton: Holding certificates?

The Witness: Holding certificates to transport general commodities over regular routes.

Exam. Lawton: Yes.

By Mr. Edward Wheeler:

Q. Are there more than 67 carriers certificated by the Interstate Commerce Commission who operate in the State of Florida?

A. Of general commodities?

Q. Of all commodities.

A. Oh, certainly.

Q. Let's take general commodities.

A. Yes.

Q. How many are there?

A. I am not prepared, in the absence of the record, to say how many there are.

Q. So your answer on the top of page 5 is limited to the 67 carriers to which you refer?

A. Yes, in this testimony.

Exam. Lawton: Off the record.

(Discussion off the record.)

By Mr. Edward Wheeler:

Q. Mr. Witness, how do you know that the lower cost resulting to exempt carriers by reason of their securing a trip lease and return load thereunder is passed onto the shipper?

[fol. 3380] A. In what statement did I make reference to a lower cost to that class of carrier?

Q. On page 5, paragraph 3. I think what you have is the converse of that. You say if they were not able to secure return loads they would have to increase rates to balance the nonrevenue return mileage. Then you say, "This, of course, would be passed onto the shipper who pays the bill."